89-248

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

No. _____

DONALD E. TYLER, M.D.

Petitioner

v.

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AND PART I OF APPENDIX A

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264 pp

QUESTIONS PRESENTED

1. Has the federal court of appeals sanctioned, condoned, and ratified such extreme departure from accepted and usual course of judicial proceedings by the U.S. District Court for the District of Oregon as to call for exercise of this Court's power of supervision?

2. Does this Court approve, condone, and ratify an **injunction based upon perjury** by a lawyer-plaintiff, **conspiracy to commit perjury and obstruct justice** by all plaintiffs (all of whom are lawyers), and the **joinder and participation in conspiracy to obstruct justice by judges of the U.S. District Court and by justices of the Circuit Court of Appeals** for the Ninth Circuit?

3. Does this Court approve, condone, and ratify the district court and Court of Appeals acting in conflict with all pertinent Constitutional provisions,

statutes, rules of procedure, legal precedence, and precedence as to use of equity powers?

4. Inasmuch as the decisions, order of injunction, and orders of sanctions by the U.S. District Court for the District of Oregon and the U.S. Circuit Court of Appeals are in complete disregard and in gross conflict with applicable decisions of this Court and as to federal questions, will this Court review by way of writ of certiorari and correct?

5. Is the repeated fraudulent, illegal use of federal courts to deny the petitioner his right of trial by jury in state courts as provided by common law and state constitution, and the taking of his money under guise of costs, double costs, and attorney fees condoned, approved, and ratified by this Court?

6. Has the petitioner been denied his right of trial by jury, and prospectively,

in violation of the 1st, 5th and 7th Amendments of the U.S. Constitution?

7. Has the property of the petitioner been taken in violation of the First Amendment of the U.S. Constitution and without due process of law in violation of the Fifth Amendment under color of rules of procedure, and are FRCP 11, FRAP 38, and 28 USC § 1912 violative of the U.S. Constitution?

8. Did the U.S. District Court for the District of Oregon act without jurisdiction and did the U.S. Court of Appeals act without jurisdiction except as to supervisory power to order dismissal of the suit, dissolution of the injunction, and vacation of order of sanctions by the U.S. District Court?

9. Inasmuch as Judge Owen Panner of the U.S. District Court was assigned the case by Judge James Redden who was a named coconspirator in the case subject to being

stopped by the injunction and Judge Panner acted to the injury and prejudice of the petitioner in gross disregard and violation of all pertinent rules of procedure, statutes, Constitutional provisions, legal precedence, established principles of equity, and pronouncements of this Supreme Court, was the petitioner denied his right to an impartial judge in violation of the Fifth Amendment of the U.S. Constitution?

10. Was the petitioner denied his right to fair trial and without due process of law in violation of the Fifth Amendment of the U.S. Constitution?

11. Does this Supreme Court approve, condone, and ratify fraudulent trial and proceedings and violations of decisions of this Court including but not limited to: (1) lack of legal jurisdiction, (2) lack of jurisdiction of the judge, and denial of impartial judge, (3) lack of equity

jurisdiction, without allegations or showing of standing, inadequate remedy at law, and actual or threatened irreparable injury, (4) injunction issued in violation of 28 USC §2283, (5) injunction to aid persons lacking standing, (6) false fraudulent allegations in the complaint, including but not limited to false fraudulent allegations concerning standing and fraudulent allegations to claim jurisdiction based upon res judicata exception to 28 USC §2283, (7) trial held in violation of FRCP Rule 7 before answer was filed and when the case was not at issue, (8) decision and injunction knowingly based upon perjury and conspiracy to commit perjury by the plaintiffs all of whom are attorneys, (9) decision and injunction not supported by pleadings, not supported by evidence, and contrary to all evidence, (10) complete disregard of rules of evidence including

unauthorized taking of judicial notice of proceedings in a case not before the court, (11) application of bar by res judicata and collateral estoppel without the complete records of the cases relied upon in evidence, (12) application of bar by res judicata and collateral estoppel as to judgments of cases in which fraud and collusion going to jurisdiction and judgment were alleged and shown by the petitioner, (13) rulings by the U.S. District Court as to the merits of a case pending in an Oregon state court and as to merits of prior cases in Colorado state courts thereby acting as an appellate court of the state courts completely without jurisdiction?

28 USC §2403 may be applicable and COPY OF THIS PETITION HAS BEEN MAILED TO THE SOLICITOR GENERAL OF THE UNITED STATES

TABLE OF CONTENTS

	Page
Questions presented	i
Table of Authorities	xi
Opinions Below	2
Jurisdiction of this court	2
Constitutions, statutes, rules	3
Facts of the case	4
Argument	12
I. The courts erred in denying defendant's motion to dismiss for lack of jurisdiction	12
II. The court erred in denying petitioner's motion to dismiss by Rule 12	30
III. Judge Panner acted without jurisdiction and in violation of the 5th amendment	35
IV. First amendment violation	39
V. The judgment and injunction were knowingly based upon perjury by a plaintiff and conspiracy to commit	

perjury by all plaintiffs and their counsel 41

VI. Fraudulent trial in violation of 5th Amendment

VII. Pleadings do not support judgment and injunction 44

VIII. No evidence in support and all evidence is contrary to findings, judgment, and injunction 49

IX. No jurisdiction concerning merits of case pending in state court; no jurisdiction to enforce state court judgments by injunction. 55

X. Violation of law and principles of equity in abuse of discretion 56

XI. Sanctions against the petitioner were a taking of property without due process of law and in violation of his 1st, 5th, and 7th Amendment rights and Rule 11,

FRCP, Rule 38, FRAP, and 28 USC § 1912 violate those Amendments of the U.S. Constitution 59

Conclusion 63

APPENDIX A

PART I (This volume)

Orders, opinions, Judgments

APPEAL COURT order A-1

TRIAL COURT orders A-7

Recusal of Judge Redden and assignment of Judge Panner A-7

Order denying motion to dismiss for lack of jurisdiction A-13

Pretrial conference (denying motion to dismiss by Rule 12) A-18

Injunction order A-21

Facts, Findings, Conclusions A-25

Sanctions order A-43

COMPLAINT A-51

Transcript of trial A-60

Notice of perjury A-94

COMPLAINT of case subject
of injunction (1st part) A-101

APPENDIX A, PART II (Second volume)

Complaint of case subject
of injunction (continued) A-101
Exhibit A-complaint of prior
case (basis of claim of res
judicata) A-283
Other exhibits A-329

DISMISSAL IN STATE COURT BY
JUDGE JACKSON A-394

REGISTER OF ACTIONS, CIRCUIT
COURT OF STATE OF OREGON,
case "removed" - 86-06-20969-L. A-398

CONSTITUTIONS, STATUTES, RULES A-399

TABLE OF AUTHORITIES

Cases	Pages
Aaberg v. Dist. Ct., 136 Colo 525, 319 P2d 491 (1957)	37
Adam v. Saenger, 303 US 59, 58 SCt 454, 82 LEd 649	24
Akers v. Sears Roebuck & Co., 38 F Supp 741 (DC,Id, 1941)	22
Allen v. Pullman's Palace Car Co., 139 US 658, 35 LEd 303, 11 SC 682 (1890)	30,31,48
Americana Fabrics, Inc. v. L & L Textiles, Inc., 754 F2d 1524 (9th Cir,1985)	28
Atlantic Coast Line RR. Co. v. Brotherhood of Locomotive Engineers, 398 US 281, 26 LEd2d 234, 90 SCt 1739 (1970)	58
Ayers v. Watson, 113 US 594, 5 SCt 641, 28 LEd 1093 (1885)	13

Baldwin v. Traveling Men°s Assn.,
283 US 522, 51 SCt 517, 75 LEd2d
1244 (1931) 27

Bennett v. Gray, 333 Ill App 143,
76 NE2d 798 (1948) 47

Bently v. Barrett, 146 So 349
(La App, 1933) 47

Bernhard v. Bank of America Nat.
Trust & Sav. Ass'n, 19 Cal 2d 807,
122 P2d 892 (1942) 20

Bob Godfrey Pontiac, Inc. v. Roloff,
291 Or 318, 630 P2d 840 (1981) 23

Bonds v. landers, 279 Or 169,
566 P2d 513 (1977) 33

Boulter v. Cook, 32 Wyo 461,
234 P 1101 (1925) 16

Casterella v. Casterella, 65 A.D.2d,
614, 409 NYS2d 548 (1978) 37

Clark v. Lesher, 235 P2d 71,
(Cal App, 1951) 22

Clark v. Sloan, 169 Ok 347,
37 P2d 263 (1934) 22

County of Mobile v. Kimball,
102 US 691, 26 LEd 238 (1880) 19
Dennis v. Sparks, 449 US 24,
101 SCt 183, 66 LEd2d 185 (1980) 21,40
Dixie Meadows Independence Mines Co. v.
Kight, 150 Or 395, 45 P2d 909 (1935) 15
Dixon v. Bowen, 85 Colo 194,
274 P 824 (1929) 22,23
Durfee v. Duke, 375 US 106,
84 SCt 242, 11 LEd2d 186 (1963) 20
Fahey v. Calverly, 208 F2d 197
(9th Cir,1953) 23
First Presbyterian Church v. Rabbit,
118 F2d 732 (9th Cir, 1941) 45
Frist v. Gallant, 240 F Supp 827,
(WD,SC, 1965) 45
Gaer v. Bank of Baker, 107 P2d 877,
(Mont. 1940) 37
Galpin v. Page, 18 Wall 350,
21 LEd 959 (1873) 12,16
Georgia v. Brailsford, 2 Dall 402,
1 LEd 433 (1792) 31

Getsinger v. Corbell, 188 NC 553,
125 SE 180 (1924) 22
Graham v. Morgan, 129 F Supp 199,
(ND,Ok, 1955), aff'd 228 F2d 625
(10th Cir, 1956) 22
Hart v. Hunter, 114 SW 882,
(Tex Civ App, 1908) 25
Heatherly v. Hadley, 4 Or 1 (1869) 16
Henson v. Payne, 302 SW2d 44
(Mo App, 1956) 46,48
Housing Authority v. Millwood,
472 F2d 268 (5th Cir, 1973) 14
Huffman v. Pursue, Ltd., 420 US 592,
95 SCt 1200, 43 LEd2d 482 (1975) 31,58
Hume v. City of New York, 255 F 488
(2nd Cir,1919) 23,45
IMFC Professional, Etc. v. Latin
Am. Home Health, 472 F2d 152
(5th Cir, 1982) 14
In re American Fidelity Corp.,
28 F Supp 462 (SD,Cal,1939) 12
In re Ivory's Estate,37 Cal App2d

22, 98 P2d 760 (1940) 16

In re Murchison, 349 US 133,
75 SCt 623, 75 LEd2d 942 (1955) 39

Johnston v. Ota, 43 Cal App2d 94,
110 P2d 507 (1941) 19,32,50

Jones v. Flannigan, 270 Or 143,
526 P2d 543 (1974) 20

Laughlin v. Hughes, 161 Or 295,
89 P2d 568 (1930) 24,49

Lockwood Grader Corp. v. Bockhaus,
129 Colo 339, 270 P2d 193 (1954) 33

Martinez v. Seaton, 285 F2d 587,
(10th Cir, 1961) 14

Maryland v. Soper (No.1), 270 US
9, 46 SCt 185, 70 LEd 449 (1926) 13

Maytag Southwestern Co. v. Thornton,
20 SW2d 283 (Tex Civ App, 1929) 45

Munson v. Pawnee Cattle Co.,
53 Colo 337, 126 P 275 (1912) 15

New Orleans Land Co. v. Leader Realty
Co., 255 US 266, 65 LEd2d 621,
41 SCt 259 (1920) 23

Newin v. Hartford Accident & Indemnity Co.,37 NY2d 211,333 NE2d 163 (1975) 22,52

Noonan v. City of Portland, 161 Or 213, 88 P2d 808 (1938) 26

Oklahoma Stockyards Nat. Bank v. Pierce, 114 Ok 24, 243 P 144 (1925) 15

O'Toole v. Franklin, 279 Or 513, 569 P2d 561 (1977) 23

Parsons Steel, Inc. v. First Alabama Bank, 474 US 518, 88 LEd2d 877, 106 SCt 768 (1986) 5,6,7,43

Pell v. McCabe, 250 US 573, 63 LEd 1147, 40 SCt 43 (1934) 13,20

Pomeroy v. Waitkus, 183 Colo 344, 517 P2d 396 (1973) 20,21,51

Radue v. Dill, 74 Wis2d 239, 246 NW2d 507 (1976) 22

Rankin v. Howard, 633 F2d 844 (9th Cir, 1980),Cert den.451 US 939 28

Rich v. Mentz Township, 134 US 632, 10 SCt 610, 33 LEd 1074 (1890) 51

Ropacki v. Ropacki, 354 Ill 502,
188 NE 400 (1933) 19,51
Roth v. Roth, 1 NE2d 724
(Ill App, 1936) 25,46,47,48
Roush v. District Court of Eigth
Judicial Dist. for Cascade County,
101 Mont 166, 53 P2d 96 (1935) 47
Russell v. Place, 94 US 606,
24 LEd 14 (1877) 19,32
Sinclair Refining Co. v. Wyatt,
347 Mo 862, 149 SW2d 353 46,48
Slaughter-House Cases, 77 US 273,
19 LEd 915, 10 Wall 273 (1869) 55,56
Smith v. Nippert, 76 Wis 86,
44 NW 846 (1890) 22
South State Inv. Co. v. Brigum,
43 Or App 273, 602 P2d 1084 (1979) 16
Southwest Airlines Co. v. Texas
Intern. Airlines, 546 F2d 84
(5th Cir, 1977) 20
Spielman Motor Sales Co. v. Dodge, 295
US 89, 79 LEd 1322, 55 SCt 678 (1935) 31

State v. Biggs, 198 Or 413,
255 P2d 1055 (1953) 57
State v. George, 250 Ark 968,
470 SW2d 593 (1971) 37
State v. Lewis, 113 Or 359,
230 P 543 (1924) 57
State v. Thomson, 76 ND 125,
34 NW2d 80 (1948) 37
State v. Utz, 236 SW 386 (MoApp,1922) 27
State of Missouri v. Title Guaranty &
Surety Co., 72 F2d 595 (8th Cir,1934) 12
State of Texas v. State of Florida,
306 US 398, 59 SCt 563, 83 LEd 817
(1939) 31,58
Swan v. Landgren, 6 Wash App 713,
495 P2d 1044 (1972) 47
Tanton v. State nat. Bank of El Paso,
43 SW2d 957 (Tex Civ App, 1931) 25,46
Taylor v. Lauridsen, 161 Cal 120,
118 P 535 (1911) 16
Thompson v. Whitman, 18 Wall 457,
21 LEd 897 24

United States v. Schwartz, 562 F2d 427 (7th Cir, 1977) 30

Vendo Co. v. Lektro-Vend Corp., 433 US 623, 53 LEd2d 1009, 97 SCt 2881 (1977). 56

Verplanck v. Van Buren, 76 NY 247 (1879) 22,23

Vincent v. McElvain, 304 Ill 160, 136 NE 502 (1922) 27

Welch v. Morris, 49 Id 781, 291 P 1048 (1930) 16

Wells v. Applegate, 12 Or 208, 6 P 770 (1885) 26

Williams v. Walnut Park Plaza, Inc. 68 F Supp 957 (DC,Pa, 1946) 45

Young v. Martin, 8 Wall 354, 19 LEd 418 (1869) 26

CONSTITUTIONS

U.S. Constitution

First Amendment 39,40,56,59,62,63

Fifth Amendment 35,39,44,48,49,56,59,62,63

Seventh Amendment 55,56,59,62,63

Oregon Constitution

Art. I., §§ 10,16,17 63

STATUTES

Federal

28 USC 144 36

28 USC 455 38

28 USC 1292 59

28 USC 1912 59,61,62

28 USC 1442 14

28 USC 1446 13,15,17,25

28 USC 1447 18

28 USC 2283 3,12,19,27,55,56

State

ORS 9.460 23

ORS 166.725 23

RULES OF CIVIL PROCEDURE

Federal

FRAP Rule 38 59,60,61,62

FRCP Rule 11 59,61,62

FRCP Rule 15 46

State

ORCP Rule 7 16

ORCP Rule 19 42

ORCP Rule 23 26

OTHER AUTHORITIES

16 Am Jur2d Conspiracy §44,p.150 33

16 Am Jur2d §62, p. 157 33

16 Am Jur2d pp. 150-1 34

29 Am Jur2d Evidence, §276, p. 326 44

42 Am Jur2d Injunctions p. 1097 48

42 Am Jur2d §169, pp. 1062-3 30

15A CJS pp. 678,686 33

21 CJS s.83 27

30 CJS Equity §42, p. 855 31

30 CJS Equity §93, pp. 1006-12 58

31 CJS s.293, p.750 44

35 CJS p. 438 45

35A CJS Fed. Civ. Proc. §449,p.658 19

49 CJS pp. 95,99 48

88 CJS Trial §§ 4,12,29,30 47

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

DONALD E. TYLER, M.D.,

Petitioner

v.

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Donald E. Tyler, M.D., petitioner herein, petitions that a writ of certiorari issue to review the judgment

of the Unites States Court of Appeals for the Ninth Circuit entered in the above entitled case on July 3, 1989.

OPINIONS BELOW

Decisions, opinions, and judgments are in **APPENDIX A**, infra: **U.S. COURT OF APPEALS** "Memorandum" (Order affirming trial court and order of sanctions as to the appeal), p. A-1; **TRIAL COURT** recusal of Judge Redden and assignment of Judge Panner, p. A-7; denial of motion to disqualify Judge Panner, p. A-8; denial of motion to dismiss for lack of jurisdiction, p. A-12; Pretrial conference p. A-18; Injunction and judgment, p. A-20; Findings of fact, conclusions of law and order granting permanent injunction, p. A-25; Order of Rule 11 sanctions, p. A-43.

JURISDICTION OF THIS COURT

Jurisdiction of this case in the U.S. District Court was fraudulently based upon color of 28 USC §2283. Jurisdiction of

this Supreme Court is based upon Article III and claim of violations of the 1st, 5th, and 7th Amendments of the U.S. Constitution and violation of 28 USC §2283 and other federal statutes. Appeal was based upon FRAP Rule 3 to reverse judgment entered without jurisdiction. This petition is timely filed in conformity with 28 USC §2101(c) and Supreme Court rule 20(.2,.4). The judgment of the U.S. Court of Appeals for the Ninth Circuit for which review is sought was issued on July 3, 1989.

CONSTITUTIONS, STATUTES, RULES

The following are pertinent to this case as set forth in the appendix: 1st, 5th, and 7th Amendments of the U.S. Constitution; 18 USC §§ 241, 371, 1621, 28 USC §§ 1446-7, 1912, 2283, 144, 455; FRCP 7,11,15; FRAP 38; Oregon Constitution Art. I, §§10,16,17, ORS 9.460, 161.450, 162.065, 162.085,162.235,162.305, 166.715 et seq., ORCP 7, 19, 23.

FACTS OF THE CASE

The petitioner, defendant below, filed a complaint in a state court on April 29, 1987, seeking trial by jury for damages from plaintiffs herein and others with common law cause of action "Unlawful interference with and obstruction of justice and by fraudulent use of legal proceedings pursuant to conspiracy." Copy at p. A-101. That case is subject of pending **PETITION FOR WRIT OF CERTIORARI, Tyler v. Hartford, No. 88-1978.** The cause of action includes claim under Oregon statutes for damages caused by racketeering, outrageous conduct, and by prohibited conduct of lawyers. Cited are more 30 criminal and 90 fraudulent acts committed by plaintiffs in this instant action and their coconspirators. Notice of Disqualification of Judge Yraguen, a named coconspirator of the defendants, including plaintiffs herein, was filed by the

petitioner on June 5, 1987. Three days later, admitting conspiracy with Judge Yraguen (verified by secret conferences for which they billed), on June 8, 1987, plaintiffs herein initiated this action seeking injunction by Judge Redden, another named coconspirator and in violation of Parsons Steel, Inc. v. First Alabama Bank, 474 US 518,525, 88 L Ed2d 877, 106 SCt 768 (1986) which held that, "Challenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment must be pursued by way of appeal through the state-court system and certiorari from this Court." After several documented secret conferences between plaintiffs and Judge Jackson, on July 30, 1987 Judge Jackson fraudulently dismissed the case under color of res judicata and collateral estoppel. Copy Appendix, p. A-394. Maintaining this case was in direct

violation of Parsons at 474 US 524, "*** limiting the relitigation exception of the Anti-Injunction Act to those situations in which the state court has not yet ruled on the merits of the res judicata issue." (It referred to "ruled on," and did not require final adjudication for anti-injunction.) Judge Panner fraudulently rationalized that he didn't violate Parsons because this case was initiated prior to the decision in the state court. p. A-86-7. The anti-injunction statute is concerned with the order of injunction, not the prior procedures. Plaintiffs delayed the instant action to obtain outrageous awards of attorney fees through conspiracy with the state judge and sought this injunction to stop appeal in state courts including for those fees. On October 6, 1987, the plaintiffs sought and obtained a 90 day extension under pretext to complete discovery, of which there was

none, and to lodge a pretrial order, which was never lodged. On **February 22, 1988**, they requested another extension of time, and on March 4, 1988, they requested a change in place of trial which could cause delay. In the meantime from January 30, 1988, to April 5, 1988, Judge Jackson awarded them over $20,000 in attorney fees for their time for one motion, motion to dismiss for failure to state a claim. The Yturri firm billed $650 for research of racketeering laws, and additionally for conferences with the district attorney. In petitioner's Motion to Vacate Settings for Pretrial conference and trial, submitted **March 11, 1988**, **the U.S. District Court was informed that the case had been dismissed by res judicata and collateral estoppel**, subject of pending appeal. It was submitted that the plaintiffs had not alleged or shown and could not show actual or threatened

irreparable injury or that illegal remedy was inadequate. Judge Panner denied the motion, went ahead with pretrial and trial in violation of all principles of equity and Parsons, and oppressively awarded the plaintiffs attorney fees for that motion. Trial was conducted on **April 11, 1988,** without the case being at issue, as no answer was filed, in violation of Rule 7, FRCP. Perjury was committed by Carl Burnham,Jr., copy of notice in Appendix, A-94. At least 3 perjuries were committed (pp.A-66, 73) including the statement that the case was dismissed as being frivolous to provide color of justification for Judge Panner to violate Parsons, when in fact it was dismissed by res judicata and collateral estoppel. **Notice of perjury and conspiracy to commit perjury was filed May 25, 1988.** p. A-94. Knowing the judgment and injunction were based upon perjury and conspiracy to commit perjury

by all plaintiffs, Judge Panner issued judgment and injunction on **August 15, 1988**, joining the conspiracy to obstruct justice.

Judge Redden initially was assigned the case. After notice he was disqualified, after motion to disqualify him, and after the petitioner filed petition for writ of mandamus in the Ninth Circuit Court of Appeals, Redden assigned the case to Judge Panner on July 7, 1987. Objections were filed for this apparent collusion and assignment without jurisdiction, and subsequently on September 21, 1987, the petitioner (defendant below) filed a motion to disqualify Judge Panner. Judge Panner continued to act on motions and settings prior to the dismissal of the motion to disqualify him by Judge Marsh on February 17, 1988. On February 8, 1988, the petitioner submitted motion to dismiss under Rule 12 for lack of subject matter

jurisdiction and for failure to state a claim, which was denied at pretrial conference. Pretrial conference was held over the objections of petitioner without the presence of the petitioner in Portland, Oregon, (375 miles from petitioner's residence), on March 23, 1988. Plaintiffs' motion for summary judgment was denied at pretrial conference. There was no pretrial order. The trial was fraudulent and completely irregular. The case relied upon for res judicata was commenced in a state court. The records of the case in that court were never removed to the federal court and are not in evidence in this case. That lack of records was planned to enable perjury by plaintiffs herein as to proceedings in the state court. Fees for time required in this case by the plaintiffs (who never entered appearances herein as attorneys) were awarded under color of state law by

the state court judge acting without jurisdiction. (subject of Petition 88-1978). Plaintiffs sought sanctions in U.S. District Court in the amount of $2,709.00 for attorney fees and were awarded $275 and costs. The U.S. Court of Appeals affirmed the judgments and injunction and oppressively ordered sanctions of double costs and attorney fees. It did not address any of the issues of the appeal, and held that the appeal was frivolous. Appeal was obviously pre-decided but was necessary to obtain review by this Court. The plaintiffs conducted this case with apparent management and control by the Oregon State Bar through its Professional Liability Fund and Hartford which was billed by the Yturri firm. Each plaintiff, the Bar, and Hartford were all sent copies of the notice of perjury on June 3, 1988. None renounced taking part in it or refuted it.

ARGUMENT

I. THE COURTS ERRED IN DENYING THE DEFENDANT'S MOTIONS TO DISMISS FOR LACK OF JURISDICTION

Judge Panner based jurisdiction of this case as being ancillary to Tyler v. Hartford, No. 86-854-RE, the case subject of fraudulent removal from the state court to federal court, and based jurisdiction under color of the res judicata exception of 28 USC §2283. p. A-15. Any judgment can be collaterally attacked in any proceeding if that judgment is void on the face of the record due to lack of jurisdiction or if fraud was committed that appears on the face of the record or goes to the issue of jurisdiction. Galpin v. Page, 18 Wall 350 (85 U.S.), 21 LEd 959 (1873); In re American Fidelity Corp., 28 F Supp 462,470 (S.D. Cal., 1939); State of Missouri v. Title Guaranty & Surety Co., 72 F2d 595 (8th Cir.1934). "(A)llegations

of fraud open the whole matter." Pell v. McCabe, 250 US 573, 63 LEd 1147, 40 SCt 43 (1934). On the face of the record, there was no jurisdiction of that prior case, fraud is alleged, and fraud on the face of the record goes to the jurisdiction and to the judgment. There was only **fraudulent color of compliance with 28 USC § 1446**. The so-called petition for removal was submitted fraudulently and without authority by the U.S. Attorney and it did not claim representative capacity. p. A-329. On the face of the record no defendant filed a verified petition for removal in the federal court, no bond was filed, and no defendant filed a copy of a verified petition for removal with the clerk of the state court. Each and all of those requirements are jurisdictional. The claim of jurisdiction was fraudulent on the face of the record and in conflict with Ayers v. Watson, 113 US 594, 5 SCt

641, 28 LEd 1093 (1885) and Maryland v. Soper (No. 1), 270 US 9, 46 SCt 185, 70 LEd 449 (1926), the latter holding that the requirements for removal including a petition verified and filed by a defendant must be followed by a federal officer claiming right to removal under 28 USC 1442. Judge Panner fraudulently ruled, "The only prerequisite to removal under section 1442 is that the action is against a federal officer or agency." p. A-16. The case he relied upon explained, "Proper service of process on the federal officer in the state court case is a precondition to removal under § 1442." IMFC Professional, Etc. v. Latin Am. Home Health, 676 F2d 152 **footnote** 4, p. 156, (5th Cir, 1982); Martinez v. Seaton, 285 F2d 587 (10th Cir, 1961). Proper service of the federal officer is required for subject matter jurisdiction. Housing Authority v. Millwood, 472 F2d 268 (5th

Cir, 1973). On the face of the record the federal court lacked jurisdiction of the prior case relied upon by Judge Panner for federal court jurisdiction of this case, and fraudulent color of use of 28 USC §1446 on the face of the record went to that lack of jurisdiction. More fraud went to the lack of subject matter jurisdiction of that prior case. When the service is bad, "the record stultifies itself, and the judgment is void on collateral attack." Munson v. Pawnee Cattle Co., 53 Colo 337, 126 P 275,276 (1912); Dixie Meadows Independence Mines Co. v. Kight, 150 Or 395, 45 P2d 909 (1935). "A judgment procured without the service of process is a fraud *** subject to attack either collateral or direct ***." Oklahoma Stockyards Nat. Bank v. Pierce, 234 P 144,145 (Okla, 1925). Attempted service upon Judge Finesilver was made by leaving a summons and

complaint with the clerk of the federal court in Denver, Colorado. He was not served in a manner allowed by Oregon statutes and there was no personal jurisdiction of him. Rule 7, ORCP. Heatherly v. Hadley, 4 Or 1 (1869); South State Inv. Co. v. Brigum, 43 Or App 273, 602 P2d 1084 (1979). The claim that Finesilver was served is in conflict with Galpin v. Page, 18 Wall 350, 21 LEd 959 (1873) requiring strict compliance with statutes allowing service out of state.

When parties admit facts which show a judgment is void such as lack of service of a summons, it is the same as if the judgment is void on its face. Taylor v. Lauridsen, 161 Cal 120, 118 P 535 (1911); In re Ivory's Estate, 37 Cal App2d 22, 98 P2d 761 (1940); Boulter v. Cook, 32 Wyo 461, 234 P 1101 (1925); Welch v. Morris, 49 Id 781, 291 P 1048 (1930). The petitioner, plaintiff in that case

fraudulently before Judge Redden, claimed in motion to remand that Finesilver was not served. The removal statute 28 USC §1446(a) requires that with the petition the removing party "shall file *** a copy of all process, pleadings, and orders served upon him ***." On the face of the record, no summons served upon Finesilver was filed, an admission that he was not served a summons. In the so-called petition for removal, the U.S. Attorney maintained that the federal "Defendants have not been served ***." The inference is clear that in order to justify his false and fraudulent claim of federal court jurisdiction, the Hon. James A. Redden had a transcript of a hearing falsified as alleged in the complaint, paragraph 53(e)(1), pp A-223-4. (Other records were falsified, pp A-169, 176-7.) The transcript has Ms Kobbervig, Assistant U.S. Attorney stating, "Judy

Kobbervig, representing the three circuit and one district court judge; Judge Silverstein has never been served in this case." Finesilver was the federal district court judge; Silverstein was a state court judge with whom Kobbervig had no connection. The inference is clear that Kobbervig claimed Finesilver was not served.

"The record in the cause must show that proper service has been had." Dixie Meadows Independence Mines Co. v. Kight, supra. In the prior case claimed to have been removed to federal court, and upon which Judge Panner claimed res judicata applies here, the federal court had and has no original or duly authenticated returns of summonses in its record. To enable fraud in the prior case, nothing was done pursuant to 28 USC §1447 to remove records from the state court. To enable fraud in this case, the entire

record of that prior case in state and federal court is not in evidence. The presumption, without record of service, is against federal court jurisdiction. 35A CJS Fed. Civil Procedure § 449, p. 658.

Jurisdiction of this instant case is fraudulently claimed to be based upon the res judicata and collateral estoppel exception of the anti-injunction statute, 28 USC § 2283. Application of res judicata to bar an action, the denial of the Constitutionally protected right of trial, requires identical parties or their privies and positive proof with strict certainty of prior fair and full litigation of the precise issues of both cases in a court having jurisdiction. Russell v. Place, 94 US 606, 24 LEd 14 (1877); County of Mobile v. Kimball, 102 US 691, 705, 26 LEd 238,242 (1880); Ropacki v. Ropacki, 354 Ill 502, 188 NE 400 (1933); Johnston v. Ota, 43 Cal App2d

94, 110 P2d 507 (1941); Bernhard v. Bank of America Nat. Trust & Sav. Ass'n, 19 Cal2d 807, 122 P2d 892 (1942); Pomeroy v. Waitkus, 183 Colo 344, 517 P2d 396 (1974). Use of res judicata here is in conflict with Durfee v. Duke, 375 US 106, 11 LEd2d 186, 84 SCt 242 (1963) which held that res judicata is not to be applied when fraud is alleged as to the prior judgment. Injunction was denied, as "allegations of fraud open the whole matter." Pell v. McCabe, supra. The causes of action must be the same. Jones v. Flannigan, 270 Or 143, 526 P2d 543 (1974). The due process clause of the 5th Amendment must be satisfied as to standing. Southwest Airlines Co. v. Texas Intern. Airlines, 546 F2d 84 (5th Cir, 1977); Pell v. McCabe, supra. On the faces of the complaints, the parties are different, the causes of action are different, and the issues are different. The claim that the

issue of conspiracy between plaintiffs herein with each other and with Judge Redden to obstruct justice by fraudulent use of legal proceedings was adjudicated in that prior case is grossly fraudulent. The claims are fraudulent that the prior action adjudicated the allegations that the plaintiffs herein joined a continuing conspiracy to obstruct justice, that prior litigation determined the issues of violations of Oregon state anti-racketeering statutes and Oregon state statutes prohibiting misconduct of attorneys by the plaintiffs, and that a prior case litigated the issue of liability of these plaintiffs for the damages proximately resulting from their wrongful acts. See Pomeroy v. Waitkus, supra at 517 P2d 400. The judgment and injunction is in conflict with Dennis v. Sparks, 449 US 24, 101 SCt 183, 66 LEd2d 185 (1980), which allowed suit against

coconspirators of judges.

The lawsuit subject of injunction is based upon **common law** suit for damages resulting from fraudulent use of legal proceedings committed pursuant to conspiracy to obstruct justice. Verplanck v. Van Buren, 76 NY 247 (1879); Akers v. Sears Roebuck & Co., 38 F Supp 741 (Id,1941); Graham v. Morgan, 129 F Supp 199 (ND,Ok, 1955), aff'd 228 F2d 625 (10th Cir,1956); Dixon v. Bowen, 85 Colo 194, 274 P 824 (1929); Clark v. Lesher, 235 P2d 71 (Cal App, 1951); Radue v. Dill, 74 Wis2d 239, 246 NW2d 507 (1976); Smith v. Nippert, 76 Wis 86, 44 NW 846 (1890); Clark v. Sloan, 169 Ok 347, 37 P2d 263 (1934); Getsinger v. Corbell, 188 NC 553, 125 SE 180 (1924); Frist v. Gallant, 240 F Supp 827 (WD,SC,1965); Newin v. Hartford Accident & Idemnity Co., 37 NY2d 211, 333 NE2d 163 (1975). It includes suit for damages intentionally maliciously

caused by breach of Oregon statutes prohibiting attorney misconduct and damages from racketeering. ORS 9.460, 166.725. O'Toole v. Franklin, 279 Or 513, 569 P2d 561 (1977); Bob Godfrey Pontiac, Inc. v. Roloff, 291 Or 318, 630 P2d 840 (1981). The suit does not seek to invalidate the judgment of the prior lawsuit, and injunction is prohibited by 28 USC § 2283. Ver Planck v. Van Buren, supra; Dixon v. Bowen, supra; New Orleans Land Co. v. Leader Realty Co., 255 US 266, 65 LEd 621, 41 SCt 259 (1920).

On the face of the record, the federal court had no jurisdiction of the prior case. Without jurisdiction of the prior case, the U.S. District Court had no jurisdiction of this case. Fahey v. Calverly, 208 F2d 197 (9th Cir, 1953), cert den. 347 US 955; Hume v. City of New York, 255 F 488 (2nd Cir, 1919), cert den 249 US 603. The issue of jurisdiction

of the federal court in the prior case is claimed to have been litigated by denial of the petitioner's motion to remand. As noted, res judicata does not apply to that ruling when on the face of the record the court lacked jurisdiction and fraud is alleged. Also, "'when the matter of fact or law on which jurisdiction depends was not litigated in the original suit it is a matter to be adjudicated in the suit founded upon the judgment. Thompson v. Whitman, 18 Wall 457, 21 L.Ed. 897,'" Laughlin v. Hughes, 161 Or 295, 89 P2d 568,572 (1939), adopting and quoting from Adam v. Saenger, 303 US 59, 58 SCt 454, 82 LEd 649. The issue of continuing jurisdiction without the service of a federal officer was not decided. The issue of lack of original or duly certified copy of the properly amended complaint was not addressed. Without authenticated pleadings, the federal court

lacked jurisdiction to decide any of the issues therein. Roth v. Roth, 1 NE2d 724 (Ill App, 1936); Hart v. Hunter, 114 882 (Tex Civ App, 1908); Tanton v. State Nat. Bank of El Paso, 43 SW2d 957 (Tex Civ App, 1931). Fraud is apparent on the face of the record including concerning lack of authenticated pleadings which goes to lack of jurisdiction and to the judgment. The fraudulent document claimed to be a petition for removal filed by the U.S. Attorney, not a defendant, was not verified. The accompanying document, a null and void complaint replaced in the state court by an amended complaint, was therefore not authenticated. The so-called complaint filed in the federal court had been replaced properly in the state court by an amended complaint prior to the filing of the phony claim of removal in that court to execute removal, 28 USC §1446(e), prior to any responsive

pleadings, and prior to the filing of any motions in the state court. (**Burnham committed perjury** as to filing of motions prior to the filing of the amended complaint; proof of the falsity is in the state court record. The proof is in the record of this case in defendant's Motion to stay judgment and suspend injunction pending appeal; The Register of actions appended as an exhibit shows no filing of any documents by defendants therein prior to filing of the amended complaint.) The complaint was a nullity. Rule 23, ORCP; Wells v. Applegate, 12 Or 208, 6 P 770 (1885); Noonan v. City of Portland, 161 Or 213, 88 P2d 808 (1938); Young v. Martin, 8 Wall 354, 19 LEd 418 (1869). The use of the null and void, non-authenticated complaint by the plaintiffs and judge in the federal court is a fraud on the face of the record. That fraud is admitted by Burnham's perjury. On the

face of the record the federal court had no authenticated pleadings, no jurisdiction of the issues of the pleadings, and did not validly adjudicate any of the issues of that lawsuit. There is no valid judgment of the federal court in that case upon which to base ancillary jurisdiction in this lawsuit under 28 USC 2283.

The doctrine of res judicata does not apply to the issue of personal jurisdiction of the plaintiff (the defendant-petitioner herein) which was not decided in that prior case. Baldwin v. Traveling Men's Assn., 283 US 522,525, 51 SCt 517, 75 LEd 1244 (1931). The plaintiff (defendant-petitioner herein) did not seek any remedy in the federal court, a requisite for personal jurisdiction of the plaintiff. 21 CJS § 83; Vincent v. McElvain, 304 Ill 160, 136 NE 502 (1922); State v. Utz, 236 SW

386 (Mo App, 1922). The only presence of the plaintiff was prior to determination of his motion to remand and only because he was ordered to appear at that time. Lack of personal jurisdiction of the plaintiff makes the judgment void, and it deprives a judgment of res judicata or collateral estoppel effect. Rankin v. Howard, 633 F2d 844 (9th Cir, 1980); Americana Fabrics, Inc. v. L & L Textiles, Inc., 754 F2d 1524 (9th Cir, 1985).

Judge Redden fraudulently dismissed for the following given reasons: Hartford, T. Roberts, Smith, Kelly, Ruland, Roan, Bockman, Foote, and Vollack for lack of personal jurisdiction; Kostol, Ferrin, Reid, and Bobbit by statutes of limitation; Johnson, Danford, Silverstein, Steinberg, Tursi, Van Cise, Jacobucci, and Ericksen were not served summonses or pleadings; Craig "based upon judicial immunity and plaintiff's failure

to provide notice and file within the applicable statute of limitations;" and judicial immunity of Finesilver, Seth, McKay, and Logan. p. A-359. It is obvious that those dismissals determined no issues of the lawsuit subject of injunction. The dismissals **with prejudice** as to Hartford, Thomas L. Roberts, Ruland, Smith, Kelly, Roan, Bockman, Foote, Vollack, Johnson, Danford, Silverstein, Steinberg, Tursi, Van Cise, Jacobucci, and Ericksen and all defendants not served are indisputably **plainly fraudlent** on the face of the record going to the judgment because by his own rulings Judge Redden lacked personal jurisdiction. Affirmations of those dismissals with prejudice in this suit by the U.S. District Court and Ninth Circuit Court of Appeals are equally fraudulent.

For all the above reasons, The court erred in denying the petitioner's motion

to dismiss for lack of jurisdiction.

II. THE COURT ERRED IN DENYING PETITIONER'S MOTION TO DISMISS BY RULE 12

A complaint for injunction requires an allegation and showing of standing. Allen v. Pullman's Palace Car Co., 139 US 658, 35 LEd 303, 11 SCt 682 (1890); 42 Am Jur2d § 169, pp. 1062-3. The complaint was not dismissed even though it did not allege standing. The plaintiffs falsely and fraudulently alleged in paragraph 7 of their complaint, "Some of these defendants (86-06-20969-L) are now plaintiffs in the present action." (emphasis added) The only plaintiff herein who was a defendant in that prior action is Craig, on the face of the complaints. Each person seeking an injunction must show standing to seek such an injunction. United States v. Schwartz, 562 F2d 427 (7th Cir, 1977); 42 Am Jur2d § 169. The plaintiffs have shown no standing to sue for injunction, and the

complaint fails to state a claim for that reason as well as for other reasons.

In direct conflict with decisions of this Court, the complaint was allowed for injunction to stop a pending state court case without allegation of actual or threatened **great, immediate irreparable injury.** Huffman v. Pursue, Ltd., 420 US 592, 95 SCt 1200, 43 LEd2d 482 (1975). It does not allege actual or threat of any irreparable injury, the indispensable basis for exercise of any equity powers. State of Texas v. State of Florida, 306 US 398, 411, 59 SCt 563, 83 LEd 817 (1939); 30 CJS Equity § 42, p. 855. In direct conflict with decisions of this Court, the complaint for injunction was allowed without allegations of **inadequate remedy at law.** Georgia v. Brailsford, 2 Dall 402, 405, 1 LEd 433,435, (1792); Spielman Motor Sales Co. v. Dodge, 295 US 89, 79 LEd 1322, 55 SCt 678 (1935); Allen v.

Pullman's Palace Car Co., supra; 42 Am Jur2d §. 169.

The complaint fraudulently fails to state the basis for dismissals in the prior case. As in Johnston v. Ota, 43 Cal App2d 94, 110 P2d 507, 510 (1941), "There were no means by which the court could have determined whether demurrer in the former case was sustained for want of jurisdiction or upon one or more of the special demurrers or whether it was for lack of substance in the complaint to constitute a cause or causes of action. 'If on the face of the record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when pleaded and nothing conclusive in it when offered in evidence.'" See Russell v. Place, 94 US 606,610, 24 LEd 14 (1877). The only issue identified and alleged as decided in the prior action is a "conspiracy theory." In

a civil action alleging conspiracy, the gist of the action and the cause of the action is not the conspiracy. The cause of the action is based upon the wrongful acts done by one or more of the defendants to the injury of the plaintiff. 16 Am Jur2d Conspiracy § 44, p. 150; Bonds v. Landers, 279 Or 169, 566 P2d 513 (1977); Lockwood Grader Corp. v. Bockhaus, 129 Colo 339, 270 P2d 193 (1954). " *** (A)n allegation of the conspiracy does not in and of itself allege a cause of action, and ordinarily it need not be alleged in order to impose liability for the wrong on all who have conspired to commit it." 15A CJS pp. 678, 686; 16 Am Jur2d § 62, p. 157. (An alternative to conspiracy is in paragraph 6 of the complaint of the case subject of the injunction, "Furthermore, and in addition, the defendants are liable for all injuries and damages to the plaintiff alleged herein

from all acts alleged herein because of their having been proximately caused by intentional acts of defendants and others which have combined to produce an indivisible, unapportionable injury.") Even if a "conspiracy theory" was decided as alleged, (which is not true), that would not be determinative of any issue or of a cause of action in a subsequent case. Furthermore, acts may revive a continuing conspiracy and when persons knowingly join a conspiracy they are responsible for all of the acts committed pursuant to that conspiracy before and after their joining. 16 Am Jur2d pp. 150-1. A jury found a conspiracy. This injunction illegally denies the petitioner remedy for all acts committed by persons who joined or who may join that conspiracy in the future. The plaintiff repeatedly has been denied right of trial by jury illegally pursuant to continuing conspiracy through various

guises which now includes fraudulent misapplication of res judicata.

Plaintiffs do not allege (a) that all parties are the same or in privity, (b) that the causes of action are the same, or (c) that all of the issues are the same in the two lawsuits, all three of which are required to state a claim to apply the doctrines of res judicata and collateral estoppel. They have shown no standing. They have not alleged actual or threatened irreparable injury or inadequate remedy at law. The fundamental requirements for a complaint seeking an injunction by application of res judicata were not met. Not dismissing this case for failure to state a cause of action was error and in direct conflict with decisions of this Supreme Court.

III. JUDGE PANNER ACTED WITHOUT JURISDICTION AND IN VIOLATION OF THE FIFTH AMENDMENT

On July 7, 1987, the Hon. Owen M. Panner was assigned this case by a disqualified judge, The Hon. James Redden, who was a named coconspirator in the pending state court subject of this injunction. p. A-130. The petitioner received no prior notice of reassignment or recusal by Judge Redden. There is no record of prior recusal, and Judge Redden, and not Judge Panner, issued the order on July 7, 1987. Any claim of reassignment of this case prior to July 7, 1987, must be considered in the light that this district court has an established record of falsification of records. (See complaint of case subject of injunction, pp. A-169,176,224.) **As a matter of law, Judge Panner acted at all times without jurisdiction.** 28 USC § 144 provides, "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge

before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, ***." Other courts considering similar statutes have held that the judge has no jurisdiction at that point, including the assignment to another judge. Gaer v. Bank of Baker, 107 P2d 877 (Mont. 1940); State v. Thomson, 76 ND 125, 34 NW2d 80 (1948); Aaberg v. Dist. Ct., 136 Colo 525, 319 P2d 491 (1957); State v. George, 250 Ark 968, 470 SW2d 593 (1971); Casterella v. Casterella, 65 A.D.2d 614, 409 NYS2d 548 (1978). The assignment of Judge Panner to this case was made by Judge Redden acting without jurisdiction, and that assignment is therefore void. Judge Redden chose Panner to judge his (Redden's) case and Panner accepted the assignment knowing that it was without jurisdiction and the prohibited result of a judge choosing

another judge to try his case. It is just one step removed from a judge trying his own case. Collusion is apparent to any reasonable person; "his impartiality might reasonably be questioned." Judge Panner abused discretion in not recusing himself pursuant to 28 USC § 455(a).

Motion to disqualify Judge Panner was filed by the petitioner on **September 23, 1987.** Judge Marsh erroneously denied the motion on **February 17, 1988**. In the meantime, in violation of 28 USC § 144, on December 3, 1987, and December 4, 1987, Judge Panner set the case for trial to be held 4/11,88, and ordered pretrial dates and procedures. On **January 3, 1988**, Judge Panner dismissed defendant's motion to dismiss for lack of personal and subject matter jurisdiction. Acts by Judge panner between the time the motion for disqualification was filed and the time it was denied were without authority and void

regardless of the outcome of the motion. The petitoner was prejudiced by denial of an impartial judge by oppressive acts of Judge Panner including acting without legal and equity jurisdiction, denial of motions to dismiss, holding trial with the case not at issue, issuance of injunction knowingly based on perjuries and conspiracy, and order of sanctions and timed to require additional notice of appeal and fee. The petitioner was denied his right to an impartial judge in conflict with In re Murchison, 349 US 133, 75 SCt 623, 75 LEd2d 942 (1955), and in violation of the 5th Amendment.

IV. FIRST AMENDMENT VIOLATION

The injunction precludes public disclosure of matters of public political interest in public jury trial by prior restraint. The lawsuit subject of the injunction seeks public trial by jury for damages resulting from fraudulent use of

courts, racketeering and conspiracy by the plaintiffs herein, who are all attorneys, insurance companies, the Attorney General of Oregon, the U.S. District Attorney, and state and federal judges. **Trial of the pending case and future cases enjoined** could disclose publicly the foregoing and that the Oregon Court of Appeals and Oregon Supreme Court have approved and ratified conspiratorial conferences between the plaintiffs and Judge Jackson, Oregon judge, to dismiss the case and to award attorney fees, **subject of pending petition for writ of certiorari, Tyler v. Hartford, No. 88-1978**, in conflict with Dennis v. Sparks, supra, which allows trial against coconspirators of judges. The petitioner's rights guaranteed by the First Amendment have been violated and continue to be violated by the injunction subject of this petition.

V. THE JUDGMENT AND INJUNCTION WERE KNOWINGLY BASED UPON PERJURIES BY A PLAINTIFF AND CONSPIRACY TO COMMIT PERJURIES BY PLAINTIFFS AND THEIR COUNSEL,

The injunction and judgment in this lawsuit were knowingly based upon perjuries and conspiracy to commit perjuries. Knowing each part was false, Carl Burnham, Jr., lawyer-plaintiff, falsely stated under oath at trial, "We then filed motions to dismiss in the State Court on grounds of collateral estoppel. *** An amended complaint was filed shortly thereafter, ***." p. A-73. The amended complaint was filed prior to the filing of any motions or responsive pleadings as a matter of right. Proof is in **REGISTER OF ACTIONS** in the state court appended to **DEFENDANT'S MOTION TO STAY JUDGMENT AND SUSPEND INJUNCTION PENDING APPEAL.** Excerpt of Record p. E-166, Appendix A, p. A-398. That perjury provided color of

invalidation of the amended complaint. ORCP 23, Appendix A, p. A-416. That perjury admits all the fraud concerning the null and void complaint including the motions directed to it, and judgment based upon it. The fraudulent invalidation of the amended complaint by this perjury was necessary for a judgment subject of enforcement by injunction in this case. Judge Redden's judgment was based upon the null and void complaint and was invalid. The perjury admits that. Jurisdiction of the district court in this case depended upon a valid judgment in that prior case. The perjury provided color of a valid judgment in the prior case directed to the "complaint." The judgment and injunction subject of this petition are based upon and dependent upon that perjury. <u>The perjury not only admits fraud in this case as to all issues concerned with the null and void complaint. It admits the fraud</u>

in the dismissal by res judicata and collateral estoppel by Judge Jackson and its affirmation by the Oregon Court of Appeals and Oregon Supreme Court, and the fraudulent awards of attorney fees in the state trial and appeal courts, in the U.S. District Court, and in the Ninth Circuit Court. SUBJECT OF PETITION NO. 88-1978.

Proof that no motions were filed to dismiss the case ("removed") on grounds of collateral estoppel is in Defendant's Motion to Stay Judgment and Suspend Injunction Pending Appeal. The perjury provided Judge Panner a prior federal court decision of res judicata as to Colorado State Court cases as color of jurisdiction tc base injunction upon them.

Burnham also falsely stated under oath, "Judge Jackson dismissed the complaint as being frivolous." p. A-66. That perjury was to confuse the record and provide color of lack of knowledge of Judge Panner

that the state court had ruled upon the res judicata issue and to cover the issuance of the injunction in violation of Parsons Steel, Inc. v. First Alabama Bank, 474 US 518, 88 LEd2d 877, 106 SCt 768 (1986). As noted above, pp. 7-8, Judge Panner knew that the case was dismissed under color of res judicata on July 30, 1987. p. A-394. By their communications and mutual interests, the inference is clear that all plaintiffs, their attorneys, the Oregon State Bar, and Hartford Insurance Co., conspired to commit those perjuries. All of them and the court were notified by certified mail of perjuries and conspiracy, p. A-94. None refuted or renounced taking part in it. Injunction issued to benefit conspirators.

VI. FRAUDULENT TRIAL IN VIOLATION OF 5TH AMENDMENT

The defendant-petitioner had not answered the complaint and was

under no duty to appear at the so-called "trial." Maytag Southwestern Co. v. Thornton, 20 SW2d 283 (Tex Civ App, 1929) **The petitioner did not appear and did not waive his right to answer the complaint** and to submit all defenses allowed in mandatory words by the rules of procedure. Rule 7, FRCP. Pleadings are not closed until an answer is filed. First Presbyterian Church v. Rabbit, 118 F2d 732 (9th Cir, 1941); Williams v. Walnut Park Plaza, Inc., 68 F Supp 957 (DC,Pa,1946); Hume v. City of New York, 255 F 488 (2nd Cir, 1918); 35 CJS p. 438. There is no provision in the rules for trial without the answer. The Court did not order a default judgment because the complaint was a fraudulent guise to obtain trial for claims that would by common law be claims for malicious prosecution for which there is a right to jury trial. The Court went ahead with a fraudulent trial,

depending upon Rule 15, FRCP, which provides color of jurisdiction for a judge to try a defendant for anything in the choosing of the judge. The Court admitted as evidence dubious documents related to matters far afield from the complaint as pretext for a fraudulent holding that the lawsuit pending as well as others were "vexatious." It is elementary that due process requires that a defendant be apprised of what he has to defend in adequate time to prepare a defense. That is the purpose of a complaint, and "proof without pleadings is useless." Roth v. Roth, 1 NE2d (Ill App, 1936: Tanton v. State Nat. Bank of El Paso, 43 SW2d 957 (Tex Civ App, 1931). An injunction must conform to the pleadings. Henson v. Payne, 302 SW2d 44 (Mo App, 1956); Sinclair Refining Co. v. Wyatt, 347 Mo 862, 149 SW2d 353. Trial was held without a complaint that revealed the true nature

of the charges to be defended against, the claim of malicious prosecution under pretext of jurisdiction based upon res judicata. Holding "trial" when the case was not at issue has been held by other courts to be abuse of discretion, reversible error, and here it was a fraudulent unlawful obstruction of justice. Swan v. Landgren, 6 Wash App 713, 495 P2d 1044 (1972); Roth v. Roth, 1 NE2d 724 (Ill App, 1936; Bently v. Barrett, 146 So 349 (La App, 1933); Roush v. District Court of Eighth Judicial Dist. for Cascade County, 101 Mont 166, 53 P2d 96 (1935); Bennett v. Gray, 333 Ill App 143, 76 NE2d 798 (1948); 88 CJS Trial §§ 4,12,29,30. The petitioner presented to the district court valid affirmative defenses and the prejudice of not being allowed to answer prior to trial. The trial was totally fraudulent being held without subject matter jurisdiction, by a

judge lacking jurisdiction, when the case was not at issue, based upon a complaint that was totally deficient as to stating a cause of action, rules of evidence were violated, and the decision was knowingly based upon perjury and conspiracy to commit perjury. The defendant was deprived the right of fair trial without due process of law in violation of the 5th Amendment.

VII. PLEADINGS DO NOT SUPPORT JUDGMENT AND INJUNCTION

"Pleadings are essential to support the judgment of a court of record, and are as necessary a basis for a valid judgment as evidence." 49 CJS Judgments pp. 95,99; 42 Am Jur2d Injunctions p. 1097; Roth v. Roth, supra. An injunction must conform to the pleadings. Henson v. Payne, supra; Sinclair Refining Co. v. Wyatt, supra; Allen v. Pullman's Palace Car Co., supra.

There is nothing in the pleadings about any prior suit other than the case fraudulently removed to the federal court, no allegation that any case was commenced without probable cause or vexatiously, and no claim of res judicata except as to "a conspiracy theory." The judgment and injunction not supported by pleadings violated and continue to violate the rights of the petitioner guaranteed by the due process clause of the 5th Amendment.

VIII. NO EVIDENCE IN SUPPORT AND ALL EVIDENCE IS CONTRARY TO FINDINGS, JUDGMENT, AND INJUNCTION

(1) There was no showing or finding of standing, actual or threatened irreparable injury, or inadequate remedy at law to support issuance of the injunction.

(2) The entire duly authenticated record of the prior cases is required to bar by res judicata or collateral estoppel. Laughlin v. Hughes, 161 Or 295,

89 P2d 568 (1930); Johnston v. Ota, 43 Cal App2d 94, 110 P2d 507 (1941). The entire record of no case other than the instant case is in evidence. **There is not even pretense that the state court record of the case relied upon in the complaint is in evidence.** Trial exhibits 1 through 12 were identified as being complaints of prior lawsuits. p. A-65. No other parts of those lawsuits are evidence except Exhibit 5 which was submitted as an unpublished opinion of the Colorado Court of Appeals, which was fraudulent subject of paragraph 8 (6) of the complaint of the case subject of injunction.

The court took judicial notice of records in the federal court of the case upon which claim of jurisdiction and res judicata is based in conflict with Johnston v. Ota, supra, at 110 P2d 509, holding, "The authority of a court to take judicial notice of its own records is

limited to proceedings in the same case." There is no evidence supporting any claim of bar by res judicata or collateral estoppel. There is no evidence that the petitioner initiated any lawsuit without probable cause or for improper purposes, or that any of the parties of those prior lawsuits made such claims, or that any court involved made such holding.

(3) There was no valid judgment in the case relied upon for res judicata in conflict with Rich v. Mentz Township, 134 US 632, 10 SCt 610, 33 LEd 1074 (1889).

(4) Res judicata and collateral estoppel require identical parties or their privies and a showing that precisely the same question was raised and determined in the prior suit. Ropacki v. Ropacki, 354 Ill 502, 188 NE 400 (1933); Pomeroy v. Waitkus, 183 Colo 344, 517 P2d 396 (1973). All evidence is to the contrary. The Court, pp. A-86-7, found that Judge

Redden dismissed the prior action based upon judicial immunity, statute of limitations and the failure to state a claim. "Unless the issues have 'necessarily been' decided in earlier proceedings, res judicata (citations) and collateral estoppel are unavailable as defenses to prevent their trial (citations)." Newin Corp. v. Hartford Accident & Indemnity Co., 37 NY2d 211, 333 NE2d 163,166 (1975). There is no finding of issues necessarily decided in the prior case that apply to the instant case and that the parties and issues are the same in the instant case. Judge Panner's findings do not support the judgment. His finding that the various cases cited were based upon "identical or similar set of facts" does not support the judgment. p. A-33. Which is it identical or similar? Also, that finding is contrary to all evidence. No prior lawsuit alleged

a conspiracy among the plaintiffs herein and between them and Judge Redden, alleged violation of criminal statutes including racketeering by the plaintiffs herein, alleged that the plaintiffs herein joined and participated in a continuing conspiracy, or alleged liability of these plaintiffs for the damages proximately caused by their wrongful and criminal acts. He found the suit subject of the injunction "vexatious" because of adverse court rulings on the "same or similar issues" in prior case. p. A-35-6. Which is it, same or similar? The continuing conspiracy with fraudulent use of legal proceedings is the cause of action. His finding that the "the substance" "is precisely the same," (pp. A-37-8) is in conflict with all evidence; and even that erroneous finding does not support application of res judicata given the prior judgment of dismissal based upon

failure to state a claim. **The court does not cite any issue that was decided in the prior action that is precisely the same issue as the case enjoined.** The Court avoided the issue of fraudulent dismissals "with prejudice" based upon lack of personal jurisdiction and of persons not served. Judge Redden refused to dismiss Hartford for outrageous conduct claim. The award by a jury to the petitioner of $730,000 including punitive damages requiring proof beyond reasonable doubt was not an adverse verdict. **All adverse rulings in other cases are alleged in the complaint to be fraudulent, the result of conspiracy, and not subject to res judicata.** Award of attorney fees by Judge Jackson, the result of fraud and collusion, and not finally litigated, does not prove anything regardless of such ruling. p. A-36. Subject of petition for writ of certiorari No. 88-1978.

IX. NO JURISDICTION CONCERNING MERITS OF CASE PENDING IN STATE COURT; NO JURISDICTION TO ENFORCE STATE COURT JUDGMENTS BY INJUNCTION

The U.S. District Court had no jurisdiction to rule upon the merits of any case pending or decided in state courts. Slaughter-House Cases, 77 US 273, 19 LEd 915, 10 Wall 273 (1869). Finding the pending case "was vexatious, without probable cause, wanton and in bad faith and for purposes of harassment," (pp A-35-6) and judgment and injunction based thereon are without jurisdiction. Without perjury by Burnham of prior federal court decision of res judicata, review of state court cases by equity and not in accord with common law as to res judicata and suit for malicious prosecution, violated the 7th Amendment, U.S. Constitution.

An exception to 28 USC § 2283 allows a federal court to issue injunctions to enforce its judgments. The injunction

ordering the petitioner to not commence any lawsuits as to issues decided in a list of state court cases violates that statute, is without jurisdiction, and violates the due process clause of the 5th Amendment. Slaughter-House Cases, supra; Vendo Co. v. Lektro-Vend Corp., 433 US 623, 53 LEd2d 1009, 97 SCt 2881 (1977). The judgment and injunction illegally deny the petitioner the common law right of remedy by jury trial as to judgments entered against him that are the result of fraud and collusion or entered without jurisdiction, and deny him rights guaranteed by the 1st, 5th, and 7th Amendments of the U.S. Constitution.

X. VIOLATION OF LAW AND PRINCIPLES OF EQUITY IN ABUSE OF DISCRETION

Injunction in this case is prohibited by 28 USC § 2283. The law is clear that a party is entitled to an impartial judge, that a court is not to act without subject

matter jurisdiction, that bar of claims by application of res judicata and collateral estoppel requires identical parties or their privies in both suits and identical issues actually fully and fairly litigated, that malicious prosecution is a common law action in which a defendant has a right to trial by jury. The law is clear that a trial is not to be held until a case is at issue. The law is clear that the U.S. District Court is not an appellate court of state courts, and that it has no subject matter jurisdiction to determine the merits or lack of merits of lawsuits pending or decided in a state court. The law is clear that judgments are to be based upon competent evidence, and not knowingly based upon perjury.

Discretion must follow the law. State v. Lewis, 113 Or 359, 230 P 543 (1924); State v. Biggs, 198 Or 413, 255 P2d 1055 (1953). The judgment and injunction in

this case were issued in conflict with all pertinent laws and clearly in abuse of discretion. Exercise of equity powers requires standing, actual or threatened irreparable injury, and inadequate remedy at law. None of those requirements were alleged, shown, or found in conflict with decisions of this Supreme Court. Huffman v. Pursue, Ltd., supra; State of Texas v. State of Florida, supra; Atlantic Coast Line RR. Co. v. Brotherhood of Locomotive Engineers, 398 US 281, 90 SCt 1739, 26 LEd2d 234 (1970). The court violated the cardinal principle of equity jurisdiction, the clean hands doctrine. In addition to the many crimes and fraudulent acts of the plaintiffs herein alleged in the verified, unanswered complaint, the injunction was issued knowing it is based upon perjuries and conspiracy to commit perjuries in the presence of the Court by the plaintiffs. 30 CJS Equity §.93, pp. 1006-12.

XI. SANCTIONS AGAINST THE PETITIONER ARE A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW AND IN VIOLATION OF HIS 1ST, 5TH, AND 7TH AMENDMENT RIGHTS AND RULE 11, FRCP, RULE 38, FRCP, AND 28 USC § 1912 VIOLATE THOSE AMENDMENTS OF THE U.S. CONSTITUTION

Sanctions in the district court against the petitioner were for filing: (1) Objections to acts by Judge Panner, (2) Motion to disqualify Judge Panner, (3) Motion to stay pending writ or petition, (4) Motion to amend order denying motion to dismiss, (5) Motion to vacate settings. (1) and (2) rightly challenged jurisdiction of a judge assigned by a disqualified interested judge. In awarding sanctions, Judge Panner erred and was judging his own case in violation of In re Murchison, supra. (3) and (4) were to stop this case by determination in the Court of Appeals of lack of jurisdiction,

which was clearly right. 28 USC § 1292. (5) was directed to vacating settings of pretrial and trial because legal issues had not been settled and the complaint had not been answered. After the case was dismissed in the state court under color of res judicata and collateral estoppel, the plaintiffs could not show threat of irreparable injury or inadequate remedy at law. The court violated Parsons, supra, by not dismissing. The court violated FRCP 7 in setting and holding trial when the case was not at issue.

The Court of Appeals ordered sanctions of attorney fees and double costs under color of Rule 38 FRAP. It did not address the issues. **Plaintiffs seek $443.60 costs and outrageously $8,148 in attorney fees.** The appeal was decided on briefs without oral argument. These perjurers filed one brief that did not address the issues and relied upon a multitude of lies. The

petitioner requests permission to address sanctions further herein when the amounts of the awards are known. 28 USC § 1912 provides for "just damages for delay." Rule 38 provides for damages for delay and single or double costs. No loss due to delay was shown. Being penal, strict construction is required. Neither the rule or statute provide for award of attorney fees. In the alternative, both are void for vagueness. The petitioner submitted all documents in the trial and appeal court based upon sound legal and equity precedence. There were no specific charges of any instance of his not following rules of procedure, citing irrelevant cases, presenting faulty argument, or causing unwarranted delay. There was no evidence of violation of Rule 11, FRCP, and/or Rule 38 FRAP, by the petitioner. The orders of sanctions were issued arbitrarily, oppressively, in abuse

of discretion, and are a taking of property without due process of law in violation of the 1st, 5th, and 7th Amendments of the U.S. Constitution. The common law provides for trial by jury for complaints alleging abuse of process or malicious prosecution. The federal courts used and continue to use Rule 11, FRCP, Rule 38, FRAP, and 28 USC §1912 to threaten, intimidate, and illegally take huge sums of money from the petitioner and others under guise of those rules to suppress freedom of speech and right to petition of the government for redress of grievances in violation of the First Amendment, to illegally suppress and deny the right of public trial by jury in violation of the First, Fifth, and Seventh Amendments, to deny the right of appeal in violation of the Fifth Amendment, and to deny the free access to the use of the courts established by the Magna Carta, the

common law, Declaration of Independence, and in this instant case to deny rights guaranteed in the Oregon Constitution, Art. I, § 10,16,17. Those rules and statute are therefor unconstitutional and void. Without the right of trial by jury, so-called rights are non-enforceable and illusory. This government holds out that common people have right to trial, the petitioner relied upon that holding out and to his detriment not only in loss of time and expense, but he has been fined and abused for seeking trial, a Constitutionally guaranteed right. Angle v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 151 US 1, 38 LEd 55 (1893).

CONCLUSION

This case and related cases have been conducted by the courts like a confidence scheme including by secret conspiracy between lawyers and judges and the use of perjury. The petitioner's rights

guaranteed by the 1st, 5th, and 7th Amendments have been violated and continue to be violated by the injunction, judgment of injunction, and sanctions ordered by the District Court and by the Court of Appeals. For the foregoing reasons, to order overturning of the judgments of the district court and the Court of Appeals, to order dissolution of the injunction, and to correct the wrongful, illegal conduct of judges and others, this petition for writ of certiorari should be granted.

Respectfully submitted by

Donald E. Tyler, M.D.
Petitioner, pro se
1092 SW 2nd Ave.
Ontario, Or 97914

August, 1989

APPENDIX A

ORDERS BY AND OPINIONS OF THE U.S. COURT OF APPEALS

UNITED STATED COURT OF APPEALS FOR THE NINTH CIRCUIT filed Jul 3, 1989 Nos. 88-88-4118, 88-4184, DC No. CV-87-601-PA

ANTHONY YTURRI; CLIFF S. BENTZ, et al., Plaintiffs-Appellees, v.

DONALD E. TYLER, M.D., Defendant-appellant

MEMORANDUM * (* not for publication, etc.)

Appeal from the United States District Court for the District of Oregon

Owen M. Panner, Chief District Judge, Presiding Submitted June 28, 1989 **

(** submitted on record and briefs)

Before: FERGUSON, BRUNETTI, AND O'SCANNLAIN, Circuit Judges

Appellant appeals an injunction and judgment entered by the district court enjoining him from pursuing a state court lawsuit, and also appeals its order imposing sanctions.

I

This action was originally brought pursuant to 28 U.S.C. § 2283, seeking to enjoin appellant from pursuing a state court lawsuit which he had filed in Malheur County, Oregon circuit court and to enjoin him from commencing, maintaining, or prosecuting any other similar actions. The case was originally assigned to Judge Redden, who recused himself, the case thereupon being reassigned to Judge Panner. Various motions, counter motions, petitions, and interlocutory motions were filed.

The trial was eventually held on April 11, 1988 in Pendleton, Oregon. Appellant did not appear. The court received into evidence appellees' trial exhibits and heard the testimony of appellees' witnesses. The court ruled in favor of appellees and granted them ten days in which to file a proposed injunction,

judgment, and a motion for sanctions. Appellees filed the proposed injunction and judgment and proposed findings of fact, conclusions of law, and order granting a permanent injunction. Judge Panner, having allowed appellant time to file pertinent objections, then issued an injunction and judgment which essentially enjoined Tyler from bringing future actions in state or federal courts relating to the issues and parties' rights adjudicated in Tyler v. Hartford Insurance, CV-88-854-RE.

Sanctions under Fed. R. Civ. P. 11 were in the amount of $275.00 Tyler timely appealed the injunction and imposition of sanctions.

II

Appellant bases his appeal on eleven arguments. The arguments upon which appellant seeks to overturn the injunction and judgment of the district court are as

follows: (1) the district court erred in denying the appellant's motion to dismiss for lack of jurisdiction; (2) the district court erred in denying the appellant's motion to dismiss under Rule 12; (3) the district court acted without jurisdiction in violation of the fifth amendment; (4) various first amendment violations; (5) the judgments and injunction were knowingly made based upon perjury by plaintiffs and conspiracy to commit perjury by all the plaintiffs and their counsel; (6) the trial was fraudulent in violation of the fifth amendment; (7) the pleadings do not support the judgment and injunction; (8) there is no evidence and there are insufficient findings to support the injunction and judgment and all the evidence is contrary to the judgment and injunction; (9) the court lacked jurisdiction concerning the merits of the case pending in state court and it had no

jurisdiction over state court judgments by injunction; (1) these orders are a violation of the principles of law and equity and are clearly an abuse of discretion; (11) the sanctions against the appellant were without evidence, contrary to all of the evidence, and a taking of property without due process of law in violation of the fifth amendment of the Constitution and Rule 11 of the Federal Rules of Civil Procedure.

This court declines to grace appellant's contentions with a point-by-point analysis of his allegations. His brief has shown no facts nor any basis in law for overturning the order and judgment of the district court. Appellant essentially seems to think that a federal court cannot enjoin future action in state courts. This court has found such an injunction may be available in a proper case. See Zipfel v. Halliburton Co., 861

F.2d 565, 568-70 (9th Cir.1988) (injunction preventing future litigation in state courts is proper.)

None of appellant's other objections has any merit in fact or law. Instead, they are similar to appellant's arguments which he has pursued in various cases for over fifteen years. To quote Lord Hewart, a former Lord Chief Justice of England, appellant has made eleven objections to the decision below. "He has argued each one. We have listened to him and we find that each one comes to nothing. Nothing multiplied by (eleven) is still nothing." Oxford Book of Legal Anecdotes 163 (M. Gilbert ed. 1987).

We have reviewed Judge Panner's findings and conclusions on the motion for imposition of sanctions under Fed. R. Civ. P. 11. We conclude that the order imposing $275.00 in sanctions is well founded and not an abuse of discretion.

Appellees have moved under Fed. R. App. P. 38 for sanctions on appeal. We find this appeal to be frivolous and hereby grant appellees' motion for attorney fees and double costs.

AFFIRMED.

ORDERS BY AND OPINIONS OF

THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Civil No. 87-601-PA ANTHONY YTURRI, et al., Plaintiffs, v. DONALD E. TYLER, M.D., Defendant. ORDER REDDEN, Judge:

Defendant filed an action in state court approximately six weeks ago. Upon a review of that complaint, I determined it necessary to recuse myself in the above entitled action. The office of the U.S. Clerk was notified and issued its Notice of Reassignment on June 19, 1987, advising the parties. I have since received a veritable mountain of paper from defendant

on an issue already decided. For the record it is ORDERED that this case has been, and is, assigned to the Honorable Owen M. Panner for all further proceedings. Dated this 7 day of July, 1987. (signed) James A. Redden, United States District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Civil No. 87-601-PA ANTHONY YTURRI, et al., Plaintiffs, vs. DONALD E. TYLER, M.D., Defendant. OPINION MARSH, Judge.

Defendant moves to disqualify the Hon. Owen M. Panner. The case at bar is an action for a preliminary injunction to prohibit defendant from proceeding with a complaint against the plaintiffs for alleged "Unlawful Interference With and Obstruction of Justice And by Fraudulent Use of Legal Proceedings Pursuant to Conspiracy." Further, plaintiffs seek to enjoin commencing, maintaining or

prosecuting in the Oregon state courts future claims based on the same allegations of conspiracy which were the basis for claims dismissed on the merits in the United States District Court for the District of Oregon in Civ.-86-854. The Hon. James A. Redden was assigned the underlying action.

Defendant moves to disqualify Judge Panner from this case contending that Judge Panner has a personal bias or prejudice in favor of Judge Redden and "in favor of the interests of the plaintiffs which correspond to the interests of Judge Redden." Specifically, defendant contends that Judge Panner's "direct interest" is "exposure of his colleague in a public trial by jury (that) would directly reflect upon him."

Title 28 U.S.C. § 144 provides: Whenever a party to any proceeding in a district court makes and files a timely

and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Defendant has submitted an affidavit contending that Judge Panner has personal bias in favor of the plaintiffs and prejudice against him. Thus the motion has been set before me.

Title 28 U.S.C. § 455 provides in relevant part: (a) Any . . . judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party . . .

The test for personal bias and prejudice is whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. United States v. Studley, 783 F.2d 934, 939 (9th Cir.1986); See United States v. Sibla, 624 F.2d 864, 867 (9th Cir.1980). The test of legal sufficiency of the section 144 affidavit is whether the affidavit "specifically alleges facts that fairly support the contention that the judge exhibits bias or prejudice directed toward a party that stems from an extrajudicial source." Sibla, 624 F.2d at 868; Ronwin v. State Bar of Arizona, 686 F.2d 692, 701 (9th Cir.1981), reversed on other grounds sub novo. Hoover v. Ronwin, 466 U.S. 558 (1984). The rationale of this rule lies in the distinction between the judicial opinions or biases developed by a judge during the course of court proceedings and

personal opinions or biases which have their origins in sources outside the courtroom. United States v. Conforte, 457 F.Supp. 641, 657 (D.C.Nev 1978), aff'd, 624 F.2d 869 (9th Cir.), cert. denied, 449 U.S. 1012 (1980). In his motion defendant contends that Judge Panner is biased because of his association with another judge of the same district. This contention is not legally sufficient to support personal bias or prejudice. Defendant°s motion is denied. DATED this 17 day of February, 1988. (signed) Malcolm F. Marsh U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Civil No. 87-601-PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK,

HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendant.

OPINION PANNER, J.

Plaintiffs bring this action to enjoin defendant Donald Tyler from litigating claims against them in state court. Defendant moves to dismiss for lack of personal and subject matter jurisdiction. I deny defendant's motion.

BACKGROUND

Defendant is a physician in Malheur County, Oregon. In June 1986, defendant brought an action against several persons in Malheur County Circuit Court, including a federal district judge from the District of Colorado, alleging a conspiracy to interfere with business relations, "outrageous conduct," and violations of 42 U.S.C. § 1983.

On March 4, 1987, after the case was removed to this court, Judge Redden

dismissed the entire action on several grounds, including judicial immunity, statute of limitations, and failure to state a claim. Tyler v. Hartford Ins., No. 86-854-RE (March 4, 1987). Defendant did not appeal. Instead, on April 29, 1987, defendant filed a second action in Malheur County Circuit Court against plaintiffs here, most of whom were attorneys representing the defendants in Tyler v. Hartford Ins. Plaintiffs filed this action to enjoin further litigation by defendant against them in state court.

STANDARD

The court should not grant a motion to dismiss unless it appears beyond doubt that the plaintiff can prove no facts in support of the claim. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The court should construe the complaint in the light most favorable to the plaintiff. Rosen v.

Walters, 719 F.2d 1422, 1424 (9th Cir. 1983).

DISCUSSION

1. Personal Jurisdiction

Defendant is an Oregon resident and has been served. Personal jurisdiction is proper.

2. Subject Matter Jurisdiction

Under 28 U.S.C. § 1651, federal courts can "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Under 28 U.S.C. § 2283, a federal court may enjoin a state court proceeding "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." A proceeding in which a party moves for an injunction under section 2283 is ancillary to the initial case. Southwest Airlines v. Texas Int'l Airlines, 546 F.2d 84, 90 (5th Cir.), cert. denied, 434 U.S. 832 (1977).

Here, this case is ancillary to Tyler v. Hartford Ins.

Defendant contends that subject matter jurisdiction was improper in Tyler v. Hartford Ins. and that this lack of jurisdiction renders subject matter jurisdiction improper here. In Tyler v. Hartford Ins., subject matter jurisdiction was based on 28 U.S.C. § 1442. Section 1442 authorizes removal of a civil action in state court against any federal officer. Cook v. Peter Kiewit Sons Co., 775 F.2d 1030, 1034 (9th Cir. 1985), cert. denied, __U.S.__, 106 S.Ct. 2919 (1986). The only prerequisite to removal under section 1442 is that the action is against a federal officer or agency. Id. (citing IMFC Professional Serv. v. Latin Am. Home Health, 676 F.2d 152, 156 (5th Cir.1982). In Tyler v. Hartford Ins., defendant sued a Colorado federal district judge. Removal, and subject matter

jurisdiction, were proper. Defendant fully litigated this issue in the previous case, so he may not relitigate it now. See Durfee v. Duke, 375 U.S. 106, 112 (1963). Subject matter jurisdiction exists here because this action is ancillary to Tyler v. Hartford Ins. Defendant argues that an injunction is improper because the state court action plaintiffs seek to enjoin concerns different parties and claims than were litigated in Tyler v. Hartford Ins. In Wood v. Santa Barbara Chamber of Commerce, 705 F.2d 1515, 1524 (9th Cir. 1983), cert. denied, 465 U.S. 1081 (1984), the Ninth Circuit held that a district court could enjoin a state court proceeding even when the second lawsuit does not precisely repeat the earlier lawsuit. "The general pattern of litigation may be vexatious enough to warrant an injunction in anticipation of future attempts to

relitigate old claims." Id. Here, defendant is suing the attorneys who represented the defendants in Tyler v. Hartford Ins. For purposes of this motion to dismiss, the two cases are sufficiently similar to survive defendant's motion. Defendant has not shown any facts that demonstrate fraud on the face of the record.

CONCLUSION

Defendant's motion to dismiss is DENIED. DATED this 3 day of January, 1988. (signed) Owen M. Panner
United States district Judge

UNITED STATES DISTRICT COURT DISTRICT OF OREGON CIVIL MINUTES - GENERAL
Case No. 87-601PA Title Yturri, et al. v. Tyler Date 3/23/88 DOCKET ENTRY
Record of PTC: Due to defendant's failure to appear for this hearing and due to previous failure to appear before Judge Redden, the Court will proceed with the

PTC. Defendant's motion to vacate settings for PTC and trial settings DENIED. Defendant's motions to dismiss are duplicates of previous motions to dismiss and are DENIED for the same reasons as given before. Plaintiffs' motion to reschedule trial from Pendleton to Portland DENIED. Trial will be held in Pendleton on Monday, April 11 at 9 am. Defendant, because he is a pro se litigant, is allowed until April 4 to submit witness statements and exhibits and trial brief (to the Court and to opposing counsel.) In event defendant fails to submit this material, he will not be allowed to submit any at trial. Any sanctions will be reserved until such time as defendant has had time to give reason for his failure to appear today. The reasons given in his March 14 motion to reschedule are not sufficient. Plaintiffs' motion for summary judgment

DENIED.* *Defendant has 10 days to object to any of plaintiffs' exhibits. Objections should be noted as to reasons, particularly as to authenticity.

PRESENT: HON. OWEN M. PANNER, JUDGE

Iris R. Reilly, Deputy Clerk

Dale Ray, Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Randall Kester, Lawrence Blunck

ATTORNEYS PRESENT FOR DEFENDANTS: None

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON No. 87-601 PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendant.

INJUNCTION AND JUDGMENT

This cause having come on regularly for trial on the 11th day of April, 1988 before the undersigned Judge of the above entitled court, plaintiffs Carl Burnham and Debbie F. Craig appeared in person, and all plaintiffs appeared by Lawrence P. Blunck, one of their attorneys; and defendant Donald E. Tyler did not appear in person or by an attorney, although he had made a general appearance in the case and had received timely notice of the trial date from the Court.

The Court, on April 11, 1988, having heard the testimony of the witnesses and having reviewed the trial exhibits and pleadings submitted by the parties, rendered an opinion finding in favor of plaintiffs and ordering that an injunction be issued; and said opinion and order were entered of record. On May____, 1988, the Court entered Findings of Fact and

Conclusions of Law and an Order Granting Permanent Injunction. Now, therefore, based upon said Findings of Fact, Conclusions of Law and Order Granting Permanent Injunction, it is hereby,

ORDERED, ADJUDGED AND DECREED that:

1. Defendant is hereby forever restrained and enjoined from litigating against plaintiffs the Malheur County, Oregon Circuit Court case of Tyler v. Hartford Insurance Group, et al (Civil No. 87-04-21572-L), except that he may continue to litigate the issue on appeal in that case regarding the issuance of sanctions against him by the Malheur County, Oregon Circuit Court, because that question has not been previously litigated in any State or Federal Court, so far as known to his Court.

Except as otherwise limited above, IT IS FURTHER ORDERED ADJUDGED AND DECREED that defendant is hereby forever

restrained and enjoined from relitigating or attempting to relitigate against plaintiffs, by commencing or filing in any Federal or State Court, any future action, complaint, or cause of action seeking adjudication of the factual and legal issues already adjudicated in any of the following cases:

a. Tyler v. Gaylor, et al, (Boulder County, Colorado, Civil No. 75 1687, and Adams County, Colorado, Civil No. 26884) (filed June 18, 1975);

b. Tyler v. Larsen and Larsen, (Adams County, Colorado, Civil No. 27045) (filed August 18, 1975);

c. Tyler v. marks, et al, (Weld County, Colorado, Civil No. 27861 (filed September 22, 1975);

d. Tyler v. Marks, et al, (Adams County, Colorado, Civil No. 28036) (filed September 23, 1975);

e. Tyler v. Gaylor's Food Store, Inc.,

et al, (Adams County, Colorado, Civil No. 28526) (filed July 6, 1976);

f. Tyler v. Waddell, (Adams County, Colorado, Civil No. 28646) (filed August 3, 1976);

g. Tyler v. Grayson, et al, (Adams County, Colorado, Civil No. 29014) (filed October 22, 1976);

h. Tyler v. Hartford Insurance Group, et al (Jefferson County, Colorado, Civil No. 77CV0782) (filed April 28, 1977);

i. Tyler v. Daniel, et al, (United States District Court for the District of Colorado, Civil No. 80-F-1305) (filed September 29, 1980);

j. Tyler v. Hartford, et al, (United States District Court for the District of Colorado, Civil No. 81-F-1287) (filed September 29, 1980);

k. Tyler v. Hartford, et al, (United States District Court for the District of Oregon, Civil No. 86-854-RE) (removed to

federal court July 3, 1986);

1. Tyler v. Hartford Insurance Group, et al, (Malheur County, Oregon Civil No. 87-04-21572-L) (filed April 29, 1987).

2. Plaintiffs have judgment against defendant for their costs and disbursments (sic) in the amount of $ _____.

3. Plaintiffs have judgment against defendant in the amount of $ to be determined as sanctions under FRCP 11.

4. Execution issue therefore.

8/15/88 (signed) Owen M. Panner District Court Judge Presented By: Randall B. Kester, Lawrence P. Blunck of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON No. 87-601 PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT,

MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PERMANENT INJUNCTION

The trial of this case was held before the Honorable Owen M. Panner on April 11, 1988. Plaintiffs were represented by lawrence P. Blunck, and defendant did not appear even though he had made a general appearance in the case and had received timely notice of the trial date from the Court.

The Court heard testimony from plaintiff's witnesses and has reviewed all of the trial exhibits, affidavits and pleadings submitted by the parties. The evidence is uncontradicted.

FINDINGS OF FACT

1. Plaintiffs are all Oregon lawyers or Oregon law firms who, with the

exception of Debbie F. Craig ("Craig"), represented various defendants in an earlier United States District Court case of Tyler v. Hartford Insurance Group, et al, Civil No. 86-854-RE ("Tyler v. Hartford"). Ms. Craig was herself a defendant in the Tyler v. Hartford proceeding and was represented by plaintiffs Frederic P. Roehr and Vergeer, Roehr and Sweek (collectively referred to as "Roehr").

2. In Tyler v. Hartford, plaintiffs Anthony Yturri, Cliff S. Bentz, Theresa J. Hutchens, Carl Burnham, Jr. and Yturri, Rose, Ebert & Bentz (collectively referred to as "Burnham") represented Hartford Insurance Group; plaintiffs Kenneth E. Roberts, Kenneth E. Roberts, P.C. and Schwabe, Williamson, Wyatt, Moore and Roberts (collectively referred to as "Roberts") represented Thomas L. Roberts, a Colorado lawyer; and plaintiffs James C.

Carter and Holmes, DeFrancq & Schulte, P.C. (collectively referred to as "Carter") represented various Colorado State Court Judges.

3. Defendant Tyler, who lives in Malheur County, Oregon, is both a physician and a lawyer. He has been licensed to practice law in the States of Colorado and California and, before the United States Supreme Court (Tr.Ex. 13, p. 32). He should therefore be well able to understand the nature of legal proceedings. He is not a typical pro se litigant.

4. The Tyler v. Hartford case was originally filed by defendant Tyler in Malheur County, Oregon Circuit Court (Civil No. 86-06-20969-L), and in his complaint and amended complaint, Tyler alleged that pursuant to a conspiracy, Hartford Insurance Group, Ms. Craig, Thomas Roberts, various Colorado judges

and others, intentionally interfered with his practice of medicine, acted outrageously which caused him to suffer severe emotional distress, and violated 42 U.S.C. §1983. Based upon the petition of as Federal Judge who was also named as a defendant (but whom plaintiffs herein did not represent), the case was removed to the Federal District Court for the District of Oregon. Tyler filed a motion for remand but the motion was denied on or about October 16, 1986 (Civil No. 86-854-RE).

5. The present plaintiffs, on behalf of their then clients, filed various motions to dismiss; and Judge Redden, who had been assigned to hear the case, dismissed all of Tyler's claims. The judgment which was entered recited that Tyler's action was "dismissed on the merits." The judgment was signed on March 9, 1987. No appeal was taken (Civil No.

86-854-RE).

6. On April 29, 1987, Tyler filed a complaint in Malheur County, Oregon Circuit Court (Civil No. 87-04-21572-L) against plaintiffs and, with the exception of some of the Colorado judges, the parties whom plaintiffs had represented in the Tyler v. Hartford lawsuit. In the complaint, Tyler alleged that plaintiffs and their clients, as well as Judge Redden, conspired, by obstructing justice and fraudulently using legal proceedings, to perpetuate or advance the alleged conspiracy that was supposedly the basis of the Tyler v. Hartford case. Tyler sought special damages of $600,000,000.00, general damages of $20,000,000.00, a trebling of the special and general damages, exemplary damages of $1,000,000,000.00 from Hartford Insurance Group, and exemplary damages of $5,000,000.00 from each of the plaintiffs

herein.

7. Plaintiffs filed this action on June 8, 1987 to enjoin Tyler from pursuing the Malheur County, Oregon Circuit Court lawsuit (Civil No. 87-04-21572-L) and to enjoin him from pursuing any other actions against them in state or federal court to the extent that such actions are based on the legal or factual issues presented in the Tyler v. Hartford case.

8. In this proceeding, Tyler has filed a veritable mountain of paperwork. he has filed, among other things, a motion to disqualify the Honorable James A. Redden, two motions to dismiss, a motion to disqualify the Honorable Owen M. Panner, a motion to amend order dated January 3, 1988, a motion to vacate settings for pretrial conference and trial and a motion to stay proceedings. He has also filed in the Court of Appeals for the Ninth Circuit three petitions for writs of mandamus

and/or prohibition, a motion to supplement petition for writ of mandamus and/or prohibition, two motions to stay proceedings in the district court, a petition for appeal of interlocutory order, a motion to order stay of proceedings, and a motion to stay proceedings pending determination of the interlocutory appeal or petition for writ of mandamus. In addition, he filed motions for a restraining order and injunction in both the Oregon Court of Appeals and Oregon Supreme Court, all for the purpose of seeking to stop the proceedings in this case.

9. All of Tyler's motions or pleadings described above, whether filed in the Federal District Court, the Court of Appeals for the Ninth Circuit, the Oregon Court of Appeals or the Oregon Supreme Court, have been denied or rendered moot by the denial of other motions. When the

Ninth Circuit denied Tyler's third petition for a writ of mandamus, it admonished him that it may impose sanctions if any further petitions were found to be frivolous.

10. Before commencing the Tyler v. Hartford and the pending Malheur County, Oregon Circuit Court lawsuits, Tyler had filed ten other lawsuits, some in various counties in Colorado State Court and some in the Federal Court for the District of Colorado, all of which were based upon the identical or similar set of facts or circumstances which form the basis of the Tyler v. Hartford and the pending Malheur County, Oregon Circuit Court lawsuits. Those ten lawsuits are:

1. Tyler v. Gaylor, et al, (Boulder County,Colorado, Civil No. 75 1687, and Adams County, Colorado, Civil No. 26884) (filed June 18, 1975);

2. Tyler v. Larsen and Larsen, (Adams

County, Colorado, Civil No. 27045) (filed August 18, 1975);

3. Tyler v. Marks, et al, (Weld County, Colorado, Civil No. 27861) (filed September 22, 1975);

4. Tyler v. Marks, et al, (Adams County, Colorado, Civil No. 28036) (filed September 23, 1975);

5. Tyler v. Gaylor's Food Store, Inc., et al, (Adams County, Colorado, Civil No. 28526) (filed July 6, 1976);

6. Tyler v. Waddell, (Adams County, Colorado, Civil No. 28646) (filed August 3, 1976);

7. Tyler v. Grayson, et al, (Adams County, Colorado, Civil No. 29014) (filed October 22, 1976);

8. Tyler v. Hartford Insurance Group, et al, (Jefferson County, Colorado, Civil No. 77CV0782) (filed April 28, 1977);

9. Tyler v. Daniel, et al, (United States District Court for the District of

Colorado, Civil No. 80-F-1305) (filed September 29, 1980);

10. Tyler v. Hartford, et al, (United States District Court for the District of Colorado, Civil No. 81-F-1287) (filed September 29, 1980).

11. In the dozen lawsuits which Tyler has filed, he has sued numerous doctors, nurses, a hospital, a hospital association, various insurance companies, a medical society, numerous Colorado and Oregon lawyers, members of the Colorado State judiciary, a federal court judge from the District of Colorado, three federal court judges from the Court of Appeals for the Tenth Circuit, and a host of other parties, on substantially the same alleged facts. His conduct in filing and litigating the pending Malheur County, Oregon Circuit Court action, notwithstanding adverse court rulings on the same or similar issues in prior cases,

was vexatious, without probable cause, wanton and in bad faith and for purposes of harassment.

The award of attorney's fees as sanctions by Judge Jackson in the pending Malheur County, Oregon Circuit Court action and by Judge Redden in Tyler v. Hartford in this court, conclusively determined that said actions were filed wantonly, in bad faith, without probable cause and for purposes of harassment.

CONCLUSIONS OF LAW

1. Personal jurisdiction is proper because Tyler is an Oregon resident, he has been served and he has made a general appearance in the case. Subject matter jurisdiction exists here because this action is ancillary to Tyler v. Hartford (Civil no. 86-854-RE).

2. The Court is cognizant of the fact that federal courts should exercise great caution in enjoining state court

proceedings and in enjoining a party from litigating his grievances. The Court also recognizes, however, that under 28 USC § 1651, a federal court has the authority to "issue all writs necessary or appropriate in aid of (its) respective jurisdiction() and agreeable to the usages and principles of law." Moreover, under 28 USC § 2283, a federal court may enjoin a state court proceeding "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." And, a federal court may enjoin a state court proceeding even though the state court lawsuit does not precisely repeat the earlier lawsuit. Wood v. Santa Barbara Chamber of Commerce, 705 F2d 1515, 1524 (9th Cir.1983), cert. denied, 465 US 1081 (1984).

3. It is clear from the evidence presented to the Court that the substance of the twelve lawsuits which Tyler has

filed is the same. He is simply attempting to relitigate, over and over, the same matters which were previously litigated. His conduct threatens to make a complete mockery of the judicial process and cannot be tolerated.

4. The Court concludes that Parsons Steel, Inc. v. First Alabama Bank, et al., 474 US 518 (1986) does not preclude the relief which plaintiffs seek, because plaintiffs moved promptly to enjoin the defendant. The pending Malheur County, Oregon Circuit Court action was filed on April 29, 1987 and the complaint in this case was filed on June 8, 1987.

5. It is also the conclusion of this Court that the judgments entered in the various cases which Tyler has filed, particularly the judgment entered by Judge Redden on March 9, 1987, in Tyler v. Hartford, are res judicata as to the legal and factual issues attempted to be raised

in the pending Malheur County, Oregon Circuit Court action. Restatement (Second), Judgments § 119. The Court further concludes that in order to protect or effectuate the judgment of this Court which was rendered in Tyler v. Hartford, an injunction should issue, as hereinafter described.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that an injunction be issued, forever restraining and enjoining defendant Donald Tyler from litigating against plaintiffs the Malheur County, Oregon Circuit Court case of Tyler v. Hartford Insurance Group, et al (Civil No. 87-04-21572-L), except that he may continue to litigate the issue on appeal in that case regarding the issuance of sanctions against him by the Malheur County, Oregon Circuit Court, because that

question has not been previously litigated in any State or Federal Court, so far as known to this Court.

Except as otherwise limited above, IT IS FURTHER ORDERED that defendant Donald Tyler be forever restrained and enjoined from relitigating or attempting to relitigate against plaintiffs, by commencing or filing in any Federal or State Court, any future action, complaint, or cause of action seeking adjudication of the factual and legal issues already adjudicated in any of the following cases:

1. Tyler v. Gaylor, et al, (Boulder County, Colorado, Civil No. 75 1687, and Adams County, Colorado, Civil No. 26884) (filed June 18, 1975);

2. Tyler v. Larsen and Larsen, (Adams County, Colorado, Civil No. 27045) (filed August 18, 1975);

3. Tyler v. Marks, et al, (Weld County, Colorado, Civil No. 27861) (filed

September 22, 1975);

4. Tyler v. Marks, et al, (Adams County, Colorado, Civil No. 28036) (filed September 23, 1975);

5. Tyler v. Gaylor's Food Store, Inc., et al, (Adams County, Colorado, Civil No. 28526) (filed July 6, 1976);

6. Tyler v. Waddell, (Adams County, Colorado, Civil No. 28646) (filed August 3, 1976);

7. Tyler v. Grayson, et al, (Adams County, Colorado, Civil No. 29014) (filed October 22, 19760;

8. Tyler v. Hartford Insurance Group, et al, (Jefferson County, Colorado, Civil No. 77CV0782) (filed April 28, 1977);

9. Tyler v. Daniel, et al, (United States District Court for the District of Colorado, Civil No. 80-F-1305) (filed September 29, 1980);

10. Tyler v. Hartford, et al, (United States District Court for the District of

Colorado, Civil No. 81-F-1287) (filed September 29, 1980);

11. Tyler v. Hartford, et al, (United States District Court for the District of Oregon, Civil No. 86-854-RE) (removed to federal court July 3, 1986);

12. Tyler v. Hartford Insurance Group, et al, (Malheur County, Oregon Civil No. 87-04-21572-L) (filed April 29, 1987).

IT IS FURTHER ORDERED that the Court reserves ruling on the question of whether sanctions should be awarded against the defendant under FRCP 11, and plaintiffs are allowed until April 21, 1988 to file a motion for Rule 11 sanctions with appropriate supporting memoranda and/or affidavits. The defendant is allowed until May 2, 1988 to file a respose (sic), and if the Court deems necessary, a hearing for argument may then be scheduled. Dated this 15 day of Aug, 1988 (signed) Owen M. Panner United States

District Court Judge Presented by: Randall B. Kester, Lawrence P. Blunck of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Civil No. 87-601-PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendants.

ORDER Plaintiffs brought this action to enjoin defendant Donald Tyler from litigating certain claims against them in state or federal court. At trial on April 11, 1988, I granted an injunction. Plaintiffs now request Rule 11 sanctions against defendant. I grant, in part, and deny, in part, plaintiffs' motion.

STANDARDS

Federal Rule of Civil Procedure 11 provides: The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may

include an order to pay to the other party or parties that amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The court must award sanctions when a litigant violates Rule 11. Mir v. Little Co. of Mary Hospital, 844 F.2d 646, 652 (9th Cir.1988). A document is frivolous when no competent attorney could believe it is well grounded in fact and warranted by law. Id. The court determines frivolousness by an objective good faith standard of reasonableness under the circumstances. Pipe Trades Council v. Underground Contractors Ass'n, 835 F.2d 1275, 1279 (9th Cir.1987).

DISCUSSION

Plaintiffs contend that fifteen of the documents filed by defendant violate Rule 11. Defendant opposes the motion for sanctions. Defendant represents himself

and has been admitted to the bars of Colorado, California, and the Supreme Court of the United States.

Defendant argues that this court lacks subject matter jurisdiction. I adhere to my holding that subject matter jurisdiction is proper.

I agree with defendant that this court should not award sanctions for papers filed in the Ninth Circuit. Cf. Hurd v. Ralphs Grocery Co., 824 F.2d 806, 808 (9th Cir.1987) (district court cannot award sanctions for papers filed in state court). I deny plaintiffs' motion to impose sanctions for documents not filed in this court.

I deny plaintiffs' motion for sanctions regarding defendant's two motions to dismiss. When a motion contains frivolous arguments, but is not itself frivolous, sanctions are not warranted. See Golden Eagle Distrib. Corp. v. Burroughs

Corp., 801 F.2d 1531, 140-41 (9th Cir.1986). Although both motions to dismiss contained frivolous arguments, the motions themselves were not frivolous. The second motion did duplicate many of the arguments in the first motion, but it included several new arguments.

I also deny plaintiffs' motions for sanctions regarding defendant's motions to disqualify Judge James A. Redden (Docket No. 6) and to stay (Docket No. 9). The case was transferred from Judge Redden a few days before defendant filed these motions, and it is not clear that defendant knew of the transfer.

I now address the documents that violate Rule 11.

1. Objection to any Acts by Judge Panner (Docket No. 11)

Defendant filed this motion on July 15, 1987, arguing that Judge Redden lacked jurisdiction to assign another judge to

preside over the case and that, therefore, subject matter jurisdiction was lacking. I find this motion frivolous and filed to delay. There was no basis in fact or law for objecting to the transfer of a case from one judge in this district to another judge.

Plaintiffs' attorney Lawrence P. Blunck spent .80 hours on this motion. I find .80 hours justified and Blunck's hourly rate of $70 reasonable. I award $56 in sanctions.

2. Motion to Disqualify Judge Panner (Docket No. 17)

Defendant moved to disqualify me, alleging that I was biased because I serve on the same court as Judge Redden. This motion was ultimately denied by Judge Malcolm Marsh. As Judge Marsh's order explains, this motion was legally insufficient. Yturri v. Tyler, No. 87-601, slip op. (D.Or. Feb. 17, 1988).

Sanctions are warranted because the motion had no basis in fact or law.

Blunck spent .30 hours responding to this motion. I award sanctions of $21.

3. Motion to Stay Pending Writ or Petition (No. 27)

After I denied defendant's first motion to dismiss, defendant moved for a stay pending the Ninth Circuit decision on his writ of mandamus regarding the denial. I agree with plaintiffs that this motion had no legal basis and was filed for delay.

4. Motion to Amend Order Denying Motion to Dismiss (No. 28)

Defendant moved to amend the order denying the motion to dismiss so that defendant could file an interlocutory appeal. This motion was also frivolous and filed for delay. Blunck spent .40 hours on motions 27 and 28. I award sanctions of $28.

5. Motion to Vacate Settings (No. 44)

On March 14, 1988, defendant moved to vacate the pretrial conference and trial settings. The pretrial conference was set for March 23, 1988, and trial was set for April 11, 1988. The order setting these dates was filed in December 1987. Defendant argued that this motion was justified because of lack of subject matter jurisdiction, the need for more time if his second motion to dismiss was denied, and other grounds. However, defendant should have moved for a continuance much earlier if he had a conflict with the pretrial or trial dates. Defendant did not appear at either hearing. I agree with plaintiff that this motion had no legal or factual basis, and was filed for delay.

Blunck spent 1.4 hours on this motion, and Randall Kester spent .9 hours on it at $80 an hour. The amount of time and rates are reasonable. I award $170 in sanctions

for this motion.

CONCLUSION

Plaintiffs' motion for sanctions is granted in part and denied in part. Plaintiffs are awarded a total of $275 in sanctions. IT IS SO ORDERED. DATED this 14 day of September, 1988. (signed) Owen M. Panner United States District Judge

COMPLAINT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON no. 87-601 RE ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendant. COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs allege for their complaint as follows:

1.

COMPLAINT FOR INJUNCTIVE RELIEF

This is an action, pursuant to 28 U.S.C. §§ 2283, for a permanent injunction to bar defendant from proceeding with a complaint against the plaintiffs for alleged "Unlawful Interference With And Obstruction of Justice And By Fraudulent Use Of Legal Proceedings Pursuant to Conspiracy"; and/or from commencing, maintaining or prosecuting any future actions against plaintiffs in Oregon state courts when such action is based on any alleged conspiracy that has already been dismissed on the merits in United States District Court for the District of Oregon.

2.

PARTIES

Plaintiffs Anthony Yturri, Cliff S. Bentz, Teresa J. Hutchens, Carl Burnham,

Jr., Debbie F. Craig, Frederic P. Roehr, Kenneth E. Roberts, James C. Carter, and Kenneth E. Roberts, P.C., are all individuals who have been named and joined as defendants in a civil action entitled Tyler v. Hartford, et al, Case No. 87-04-21572-L, which was filed by defendant against plaintiffs in the Circuit Court of the State of Oregon for the County of Malheur on April 29, 1987.

3.

Plaintiffs Schwabe, Williamson, Wyatt, Moore & Roberts and Vergeer, Roehr & Schulte, P.C., and Yturri, Rose, Burnham, Ebert & Bentz are Oregon partnerships who have been named and joined as defendants in a civil action entitled Tyler v. Hartford, et al, Case No. 87-04-21572-L, which was filed by defendant against plaintiffs in the Circuit Court of the State of Oregon for the County of Malheur on April 29, 1987.

4.

Defendant Donald E. Tyler, M.D., is the sole named plaintiff in the case described in paragraphs 2 and 3 above.

JURISDICTION AND VENUE

5.

THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 1331 AND § 2283.

6.

Venue in this judicial district is proper under 28 U.S.C. § 1391(b) because the claim arose in Oregon and because defendant Tyler is a resident of the State of Oregon.

FACTUAL BACKGROUND

7.

On or about June 3, 1986, Donald E. Tyler, M.D., (defendant in the present action) commenced a civil action entitled Tyler v. Hartford, et al, Case No. 86-06-20969-L, by filing a complaint in the Circuit Court of the State of Oregon for

the County of Malheur. Dr. Tyler joined a number of defendants under a conspiracy theory. Some of these defendants are now the plaintiffs in the present action.

8.

On or about July 3, 1986, the defendants in the action described in paragraph 7 above, filed a petition for removal in United States District Court for the District of Oregon in Portland, Oregon. Removal was granted that same day.

9.

On or about August 8, 1986, Dr. Tyler filed a motion to remand to state court. On or about October 17, 1986, Judge James A. Redden denied Dr. Tyler°s motion.

10.

On or about December 19, 1986, all parties in the action described in paragraphs 7-9 above were advised by way of minute order that a hearing on certain motions filed by the defendants (some of

whom are plaintiffs herein) was scheduled for February 6, 1987.

11.

At the time of the hearing Dr. Tyler, who had represented himself throughout the case, failed to appear and could not be reached by telephone. Judge Redden granted the motions to dismiss filed by Thomas L. Roberts, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., Howard I Bobbitt, Hartford Insurance Group, Debbie Freepons Craig, Donald P. Smith, Jr., A.M. Kelley, Edwin G. Ruland, Philip E. Roan, Harlan R. Bockman, Marvin W. Foote, and Anthony F. Vollack. Motions to Withdraw Appearance were granted for Dean Johnson, Mac V. Danford, Harry S. Silverstein, Jr., Judge Tursi, E.P. Van Cise, Jean J. Jacobucci, and William Erickensen. A Motion for Summary Judgment was granted in favor of Sherman G. Finesilver, Oliver Seth, Monroe G. McKay

and James K. Logan. Judge Redden further ordered that the action be dismissed as against those defendants who had not been served.

12.

On or about March 9, 1987, the Clerk of the United States District Court entered Judgment in favor of the defendants (some of whom are plaintiffs herein). The Judgment stated, in part, that "plaintiff take nothing" and that "the action is dismissed on the merits." Defendant, Dr. Tyler, is therefore collaterally estopped from relitigating the issues determined in the prior action.

13.

On or about April 29, 1987, Dr. Tyler filed the complaint described in paragraphs 2 and 3 above.

14.

The complaint filed by Dr. Tyler on or about April 29, 1987, in the Malheur

County Circuit Court pleads a cause of action based on an alleged conspiracy theory, which conspiracy theory has already been "dismissed on the merits" by Order of United States District Court Judge James A. Redden. (See paragraphs 11 and 12 above. Defendant should be barred under the doctrine of res judicata from litigating the same claim.

CLAIM FOR PERMANENT INJUNCTION

15.

Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 14 above as if set forth in full herein.

16.

Plaintiffs respectfully request that, pursuant to 28 U.S.C. § 2283, defendant be permanently enjoined from maintaining Civil Action No. 87-04-21572-L in the Oregon State Court system, from commencing, maintaining or prosecuting any

future actions against plaintiffs in Oregon State Courts if such actions are based on the alleged conspiracy theory that has already been "dismissed on the merits" by Order of United States District Court Judge James A. Redden.

WHEREFORE, Plaintiffs pray that defendant be permanently enjoined from filing and/or pursuing any actions or claims against plaintiffs, including but not limited to the pending Malheur County State Court action, regarding those legal theories and claims previously asserted by defendant in the action described in paragraphs 7 through 12 above; for the reasonable costs, attorneys' fees and expenses incurred by plaintiffs in bringing this action; and for such other and further relief as the Court may deem just and proper.

COSGRAVE, KESTER, CROWE, GIDLEY & LAGESEN

By (signed) Lawrence P. Blunck, OSB#84178

Austin W. Crowe, Jr., OSB#65028
Suite 901, The 1515 Building, 1515 S.W. Fifth Avenue, Portland, Oregon 97201-5476
Telephone: (503)-227-3711

TRANSCRIPT OF TRIAL,

(as modified by motion of plaintiffs. Original is lined over, words added are capitalized and underlined.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON CV NO. 87-601 PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, vs. DONALD E. TYLER, M.D., Defendant.

April 11, 1988 Pendleton, Oregon

TRANSCRIPT OF PROCEEDINGS BEFORE: The Honorable Owen M. Panner, Chief Judge, United States District Court.

APPEARANCES: Mr. Carl Burnham, and Mr. Lawrence P. Blunck, Ms. Debbie F. Craig, Attorneys at Law, appearing in behalf of the Plaintiffs. DALE A. RAY, OFFICIAL COURT REPORTER 225 U.S. COURTHOUSE, PORTLAND, OREGON 97205 503-221-3113

WITNESS INDEX

FOR THE PLAINTIFF:	Direct	Cross	ReD	ReX
Carl Burnham	3			
Debbie F. Craig	11			

INDEX OF EXHIBITS

FOR THE PLAINTIFFS :	Marked	Offered	Rec'd
~~5 through 8~~	~~16~~	~~16~~	
~~1 through 13~~	~~17~~		
~~38 through 39~~	~~13~~		
EXHIBITS 1-13	2	2	
EXHIBIT 13, PAGES 27-37	9	9	
EXHIBIT 13, PAGES 38-39	13	13	
EXHIBIT 5, PAGES 5-8	16	16	

(Monday, April 11, 1988, 9:00 a.m.)

PROCEEDINGS

THE CLERK: Civil 87-601, Anthony Yturri, et al., vs. Donald E. Tyler.

THE COURT: All right. This is the time set for the trial in this matter. It's my understanding that the Marshal has searched the area and the defendant is not in the courtroom or the immediate surroundings; is that correct, Mr. Burnham?

MR. BURNHAM: Yes, sir.

THE COURT: All right, we will proceed with the trial. He was notified of the trial, and we will proceed. I am prepared to receive the exhibits that have been offered and that is Plaintiffs' Exhibits 1 through 13, without objection, those appear to be appropriate and I will receive Exhibits 1 through 13.

(Plaintiff's Exhibits 1 through 13 received.)

You may call your first witness, Mr. Burnham.

MR. BLUNCK: My name is Larry Blunck and I'm representing Mr. Burnham in the case. I would LIKE TO make a brief statement, but I won°t recite any facts. I think those are all in the record.

THE COURT: I have THE benefit of the motions AND the affidavits that have been filed in this case so I don't think it is really necessary.

MR. BLUNCK: All right, we will call Mr. Carl Burnham then, Your Honor.

CARL BURNHAM, was duly sworn.

THE CLERK: State your full name for the record and spell your last name.

THE WITNESS: Carl Burnham, Junior, B-u-r-n-h-a-m.

DIRECT EXAMINATION

BY MR. BLUNCK:

Q Mr. Burnham, where do you live?

A Ontario, Oregon.

Q How long have you lived there?

A 24 years.

Q What is your occupation?

A I'm an attorney.

Q Where did you attend law school?

A University of Oregon.

Q When did you graduate from law school?

A 1964.

Q In what year did you pass the bar?

A September of 1964.

Q And you are licensed to practice in Oregon?

A Yes, I am.

Q Are you a member of a law firm?

A Yes, sir.

Q What firm is that?

A Yturri, Rose, Burnham, Ebert & Bentz.

Q Where is that firm located?

A Ontario, Oregon and Fruitland, Idaho and Baker, Oregon.

Q So what is the nature of your practice?

A My practice is limited to civil litigation.

Q Does that include litigation in both State and Federal Court?

THE COURT: The Court is familiar with Mr. Burnham's background and qualifications. You may proceed.

MR. BLUNCK: Thank you, Your Honor.

Q (By Mr. BLUNCK) Mr. Burnham, have you had previously HAD time to review Trial Exhibits 1 through 13?

A Yes, I have.

Q Would you describe for us briefly what those trial exhibits consist of?

A They consist of complaints in previous litigation filed by Mr. Tyler.

Q And are those lawsuits that he's filed in both Colorado and Oregon?

A Yes, sir.

Q And that is in State and Federal Court in both Colorado and Oregon?

A Yes, sir, I think the federal court

suit was originally filed in State Court then removed. All right.

MR. BLUNCK: Your Honor, I don't think we will have Mr. Burnham recite any of the ~~statements~~ FACTS about the cases and so forth.

THE COURT: It's not necessary. The exhibits will be received.

MR. BLUNCK: All right, thank you.

Q (By Mr. Blunck) One matter, Mr. Burnham, which we ought to clarify is the status of the Malheur County action that has been pending. Could you explain to us please the status of that case?

A Judge Jackson dismissed the complaint as being frivolous, **(TYLER NOTE -- PERJURY--DISMISSAL WAS BY RES JUDICATA AND COLLATERAL ESTOPPEL, copy dismissal A-392)** Mr. Tyler then appealed it to the Oregon Court of Appeals. The action has been briefed by both parties and is

now pending. There is also an appeal which is awaiting the briefs of the respondent regarding the attorney fees that Judge Jackson ordered for filing a frivolous suit.

Q Thank you. With respect to an earlier Malheur action that was removed to Federal Court that was before Judge Redden, specifically who were you representing in that lawsuit?

A Representing Hartford Insurance Company.

Q Were there others to be involved representing other parties as well?

A Yes, there were.

Q Could you tell us as well as you know?

A Well, counsel ~~Rob Senior~~ KEN ROBERTS was retained to represent all the Colorado lawyers who had previously been involved in litigation with Mr. Tyler; Fred Roehr represented Mrs. Craig. The law firm I believe, Jim

Carter of Holmes, DeFrancq and Schulte was the lawyer representing the State Court judges. In ~~Colorado~~ ADDITION there was an Attorney General representing the Board of Medical Examiners, and the individual doctors who had been sued who were on that board in 1965, and there was a U.S. Attorney representing the Federal judges who were sued.

MR. BLUNCK: Your Honor, I would ask the Court to take judicial notice that the attorneys were all attorneys licensed to practice law in Oregon.

THE COURT: I will.

MR. BLUNCK: Thank you.

Q (By Mr. Blunck) Mr. Burnham, either during or after the case that was before Judge Redden did Dr. Donald Tyler ever threaten any type of legal action against you or members of your firm?

A Yes, I guess until he turned us all in to the Oregon State Bar Grievance procedure, then he threatened the bar and I guess all the attorneys as conspirators with some type of legal action which has not been filed, to my knowledge.

MR. BLUNCK: Could we ask that Trial Exhibit 13, Pages 28 and 27 be shown to Mr. Burnham as well as Exhibit 13, Pages 32 and 33? Your Honor, those are documents we have submitted this morning.

(Bailiff handing)

Q (By Mr. Blunck) Mr. Burnham, would you identify those documents for us?

A Well, Exhibit 13 is a complaint by Donald Tyler to the Grievance Committee of the Supreme Court of the State of Oregon?

Q An who does that complaint relate to that was filed with the Grievance

Committee?

A The conduct of Charles H. Turner, U.S. Attorney; Judith Kobbervig, Assistant U.S. Attorney; David Frohnmayer, State Attorney General, and Tom K. Elden.

Q Excuse me, does the document list the various parties?

A And all the other parties, yes.

Q Okay, thank you.

Q You can go through and identify the documents for us, please.

A They are all marked Exhibit 13.

Q They have the page exhibit NUMBER.

A Exhibit ~~1327~~ 13, PAGE 27 is the document I just described; Exhibit ~~1329~~ 13, PAGE 29 is a letter from the Oregon State Bar to Mr. Tyler; Exhibit 13 Page 3 32 is a letter from Dr. Tyler to the bar counsel. Exhibit No. 13, Page 34, is a letter that was sent to my partner, Tony Yturri, and apparently involves a dispute between Dr. Tyler

and the U.S. Secret Service agent over something of importance. I think and is that last document, a letter, Mr. Tyler sent to somebody but a copy to Mr. Yturri?

Q Can you tell us --

A Yes.

Q Can you tell us which letter Dr. Tyler has threatened to --

a well there in ~~34~~ 35 is such a letter that Dr. Tyler sent to Tony Yturri at his home, threatening litigation if myself and my associates didn°t stop defending the suit he had filed. And Exhibit 13, Page 36, is a letter that Dr. Tyler sent to Dr. Kostel, a physician in Baker, Oregon describing his history of difficulties with the Medical Association, Board of Examiners dating back to 1965 and threatening Dr. Kostel with a suit if he did not respond to the demand made by Dr.Tyler.

Q Thank you, Mr. Burnham. Are those documents a true and accurate copy of the documents they purport to be to the best of your knowledge?

A Yes, they are.

MR. BLUNCK: We will offer them as exhibits, Your Honor.

THE COURT: They will be received.

(Plaintiffs' Ex. 13, PAGES 27-37 received)

Q (By Mr. Blunck) Mr. Burnham, could you explain to us please what type of work you did when you were representing Hartford Insurance in the action before Judge Redden.

A We were initially hired I believe in June of 1986 to represent Hartford Insurance Company. We made an investigation of the background of the suit, since the exhibit that came with the complaint disclosed that county actions had been filed of a similar nature in Colorado, I contacted the

other, Hartford personnel to get a background on the suit. We then filed motions to dismiss in the State Court on grounds of collateral estoppel.

(TYLER NOTE --PERJURY, MOTION WAS TO DISMISS WAS ON OTHER GROUNDS INCLUDING FOR LACK OF PERSONAL JURISDICTION)

There is no jurisdiction in Oregon. An amended complaint was filed shortly thereafter,

(TYLER NOTE -- PERJURY AND FRAUD ON THE FACE OF THE RECORD AS TO JURISDICTION OF THE PRIOR CASE AND THIS CASE. The amended complaint was filed prior to any responsive pleadings or motions. PROOF in Register of Actions appended to DEFENDANT'S MOTION TO STAY JUDGMENT AND SUSPEND INJUNCTION PENDING APPEAL, A-398, Excerpts of Record, Page E-166. PERJURY TO PROVIDE JUDGE PANNER COLOR OF JURISDICTION WITHOUT THE AMENDED COMPLAINT BEING IN FEDERAL COURT IN THE PRIOR CASE.)

essentially the same point of view alleged in Oregon conduct or Oregon conspiracy, the case was then removed by the U.S. Attorney's office to Federal Court in front of Judge Redden. We filed a motion to dismiss in Judge Redden's court which was granted after a number of legal skirmishes regarding the seven defendants and the validity of jurisdiction of Federal Court.

Q Thank you. Mr. Burnham, the records that are on file in the case that Judge Redden handled, the court and has taken judicial notice of those proceedings, and from your participation in that case, and the work that the other plaintiffs in this case namely Mr. Roehr, Mr. Carter, Mr. Roberts and members of their firms did do this also, did they do similar type of work such as filing motions and that sort of thing?

A Yes, they did, though we did most of

work, it was through judicial efficiency since all the complaints seemed to be the same, we filed most of the documents then, they just relied on the material that we filed by and enlarge. That's not completely true, but by and large.

Q In your opinion, Mr. Burnham, is the type of work you just described to us something a reasonable and prudent lawyer would do on behalf of his client?

A Yes.

Q Was this work you and the other attorneys performed related to the ~~expense~~ REPRESENTATION of ~~the~~ YOUR clients?

A It was.

MR. BLUNCK: I have no further questions, Your Honor.

THE COURT: All right. You may step down. Any further witness, Mr. BLUNCK?

MR. BLUNCK: Yes, we call Miss Debbie Craig.

DEBBIE CRAIG, was duly sworn.

THE CLERK: State you full name for the record and spell your last name.

THE WITNESS: Debbie Frepons, F-r-e-p-o-n-s Craig, C-R-A-I-G.

DIRECT EXAMINATION

BY MR. BLUNCK:

Q Miss Craig, Where do you live?

A I live outside of Portland, Oregon.

Q How long have you lived there?

A nine years.

Q Where did you go to school?

A I graduated from the University of Denver?

Q In what year?

A In 1978.

Q Are you licensed to practice law in Oregon?

A Yes, I am.

Q When did you get licensed here?

A 1978.

Q And what is the nature of your practice?

A I'm a solo practitioner specialize -- specializing in family law.

Q Miss Craig, when did you first have any dealings or involvement with the defendant, Donald Tyler?

A It would have been in December of 1978, I was clerking the Colorado State Court of Appeals. I was serving Judge Edwin Ruland and I was the bailiff in the courtroom when Mr. Tyler made his oral argument in the case of Donald E. Tyler vs. Marks. In one of the exhibits up there is Trial Exhibit --

THE COURT: Which court was that case in?

THE WITNESS: That was in the Colorado State Court of Appeals.

Q (By Mr. BLUNCK) That was one of the cases that Donald Tyler had filed in Colorado?

A That's correct.

Q Could you identify for us, please,

Trial Exhibit 13, Pages 38 and 39.

A Pages 38 and 39 are copies of a memorandum which I prepared for the Colorado State Court of Appeals to the Chief Clerk who was Mac Danford, and I prepared this on May 23, 1979 when I was about to leave the Court, I served one year and I was leaving at the end of May. That's my recollection of my contact with Donald Tyler.

Q Is that document a true and accurate copy of the document it purports to be?

A Yes.

Mr. BLUNCK: Your Honor, we offer Trial Exhibit 13 pages 38 and 39.

THE COURT: All right. It will be received. What exhibit is that?

Mr. BLUNCK: Exhibit 13, pages 38 to 39.

THE COURT: All right.

(PLAINTIFFS' EXHIBIT 13, PAGES 38-39 RECEIVED.)

Q (By Mr. BLUNCK) Mrs. Craig, were you involved at all in writing an opinion for the ~~Oregon~~ COLORADO Court of Appeals?

A I heard oral arguments in December of 1978. Judge Ruland for whom I worked was assigned to write the opinion in that case and as a clerk for him I checked out all the necessary depositions, exhibits and whatnot, took those documents to my office which was a little cubicle in this suite of offices and kept those documents there for approximately two months as we went through the documents in preparation for writing an opinion. It was a very voluminous set of documents and they were in a very large box, they wouldn't fit on my desk so it was stored right next to my desk. On Valentine's Day I started to work on the case and noticed the entire portion had been missing and discovered the janitor at night threw the exhibits

away. The clerk, Mac Danford and I went to the garbage service, eventually went to a landfill, and of course we couldn't find a box of documents in the landfill for the city of Denver. So we were unable to go ahead and the Court started to reconstruct all the exhibits we were able -- and depositions, we were able to obtain a lot of the information from metro area Denver attorneys, there were some items we were unable to obtain and Dr. Tyler was then living in Ontario, Oregon. I was going to travel to a family wedding in Portland, Oregon and the Court decided since I was going to be in Oregon I might as well go to Ontario, Oregon and copy the documents missing from the Tyler file. On April 9, I drove from Portland, Oregon to Ontario to Dr. Tyler's home. He prepared the necessary documents. The Court had written ahead of time and told him what we needed. He went with me to a legal book

and stationery store in Ontario where I spent the better part of an afternoon xeroxing documents. He was with me the entire time except for about half-hour where he left and at the end of the day I took my bundle of information that I had from his files, then went to Portland, flew back to Denver. The Court used that information plus the information we had gotten in Colorado to reconstruct the file and eventually the order was issued from the Court certifying that the file was complete and an opinion was issued in this case. After I left the court I was provided with a copy of the opinion. The judge mailed it to me probably in June or July of that summer, 1979, but I was not a part of writing that opinion.

Q All right, in the involvement in the work you did for the Colorado judiciary, is that supposedly the basis of the conspiracy suit that Dr. Tyler

filed against you?

A That's correct. He was also suing in Colorado a number of physicians and hospitals as a conspiracy. Since then he joined the Court, the Judge, the Clerk, the Chief Clerk, myself as being part of that conspiracy.

MR. BLUNCK: I would ask that the witness be shown Trial Exhibit 5, Page 5 through -- (Clerk handing)

Q (By Mr. Blunck) Would you identify that document for us please.

A This is an opinion, an unpublished opinion that issued from the Court of Appeals when I left the court, it was issued June 4, so I had already left the Court and this is an opinion upon the case where we reconstructed the file in Tyler vs. Donald Alter.

Q And is this a courtesy copy of the opinion you received?

A That is correct.

Q And to the best of your knowledge is that a true and accurate copy of the opinion you received?

A That's correct.

MR. BURNHAM (sic): We would offer this Exhibit, pages 5 through 8.

THE COURT: That is one that I have received without objection, but I would receive it. (PLAINTIFFS' EXHIBIT 5, PAGES 5-8 RECEIVED.)

Q (By Mr. Blunck) All right. And there is mention of Edwin Ruland. Could you tell us who he is?

A Edwin Ruland was one of the judges on the Colorado Court of Appeals and was the particular Judge I was assigned to.

Q Did Judge Ruland end up being the subject of a lawsuit that Dr. Tyler, who was it then --

A Yes, several.

Q Who was Donald Smith?

A Donald Smith was the chief judge for

the Colorado Court of Appeals.

Q Did Mr. Smith end up in a federal lawsuit filed by Dr. Tyler?

A Yes.

MR. BLUNCK: I have no further questions, Your Honor.

THE COURT: All right you may step down, any further witnesses?

MR. BLUNCK: No, Your Honor, we have no other witnesses at this time.

THE COURT: I have reviewed the exhibits that are received without objection. I've reviewed the affidavits and trial briefs that were filed, and the record is uncontradicted, I have twice denied defendant's motions to dismiss this case for lack of personal and subject matter jurisdiction. Judge Marsh previously denied a motion to recuse me as the judge in this case. I denied defendant's motion to vacate the pretrial conference or trial date or to stay proceeding pending the

Oregon Supreme Court ruling on his petition for mandamus. It is my understanding the Oregon Supreme Court has since denied that petition. Am I correct about that?

MR. BLUNCK: Yes.

THE COURT: The Ninth Circuit for the third time has denied defendant's petition for writ of mandamus, admonishing the defendant that it may impose sanctions if further petitions are filed that are frivolous. The defendant didn't appear before the pretrial conference, even though I denied his motion for continuance. He didn't appear here for the trial, even though he was notified of the trial date.

The background of this case is that the defendant is a physician in Malheur County, Oregon. He was a lawyer licensed to practice in Colorado, and the exhibits demonstrate that he has filed

approximately ten previous actions in Colorado based upon hospital denial of his privileges. Most of those were unsuccessful, some were settled for nominal amounts. **(TYLER NOTE: THIS IS FALSE--NONE WERE SETTLED FOR NOMINAL AMOUNTS. ONE BEFORE JUDGE FINESILVER WAS SETTLED FOR $100,000 AGAINST THE ATTORNEY FOR BRIGHTON HOSPITAL. TWO SUITS WERE SETTLED TOGETHER AGAINST THE HOSPITAL AND THREE PHYSICIANS FOR $300,000. THOSE SETTLEMENTS RELEASED NO COCONSPIRATORS.)**

In June of 1986 he filed an action against a number of persons, including circuit and district judges, federal judges, alleging a conspiracy with business relations, outrageous conduct and violations of civil right statutes. On March the 7th, 1987 after that case was removed to this Court, Judge Redden dismissed the entire action on several grounds including judicial immunity, the

Statute of Limitations and the failure to state a claim. That was in Civil No. 86-854-RE. There was no appeal from that decision. Instead, on April 27, 1987 the defendant filed an action in Malheur County, Oregon Circuit Court, State Court, against the plaintiffs here and others and most of whom are attorneys who represented the defendants in Judge Redden's case. I don't recall that he named Judge Redden in that case also.

MR. BLUNCK: He didn't name him as a defendant, but he has referred to him as a co-conspirator.

THE COURT: All right. This action then that is being tried today was not filed to enjoin further litigation by the defendant against him. I'm aware of the anti-injunction act prohibiting the Federal Court from enjoining state court actions, except in certain limited circumstances. One of those, which of

course is an injunction that is necessary to aid the court's jurisdiction or to protect or effectuate the court's judgment. While these exceptions must be construed very narrowly, and should resolve all doubts about the propriety of injunction in favor of allowing the State Court action to proceed, the conduct of the defendant in the case, and in other cases that I've referred to, threatens to make a complete mockery of the judicial system. The defendant has added other defendants, and has slightly modified his claims from those that he made in the case Judge Redden dismissed when he filed the action in Malheur Circuit Court, and undoubtedly he can modify many more and start again, but the substance is precisely the same, and there is no serious question, but that he is attempting to relitigate over and over, the issues of conspiracy to deprive him of

his civil rights arising out of his original actions in Colorado by simply naming additional defendants and further conspiratorial charges.

A THE defendant can not escape the res judicata issue in this case. The Parson case cautions AGAINST injunctions under circumstances similar to this, however there is a difference in the case. In this case the plaintiffs moved in promptly in this Court to file this action, even before the State Court had returned its decision, which it no has, though disposition is not final. I am satisfied that Parson did not preclude the relief that the plaintiffs seek in the case. The defendant filed his State Court action in Malheur County April 29, 1987, and plaintiffs filed this action, June 8, 1987. The State Court dismissal came after this action was filed, and I'm satisfied that under the circumstances of

this case and the conduct that the defendant has engaged in, that the injunction in this case should issue. I'm not satisfied as to the extent of the injunction. It would seem that this should be a broad enough injunction to preclude the defendant from relitigating any of these issues that have previously been decided by this Court without appeal and by other courts without appeal. So I'm going to give the plaintiffs ten days to submit a proposed injunction and brief on the extent of that injunction, serve it on the defendant and I'll give the defendant ten days to respond, at which time I will decide the extent of the injunction. I'm also going to invite the plaintiffs to submit a motion for Rule 11 sanctions against the defendant and I'll give you ten days to do that with appropriate affidavits. I will give the defendant ten days to respond to that with

appropriate affidavits and if necessary i will hold a hearing on whether or not sanctions should be entered, and the extent of those sanctions. It strikes me that the only sanction that should be entered against the defendant are under Rule 11 are sanctions for actions that he has take in this Court, in this proceedings, that violate Rule 11. The defendant is not an ordinary pro se litigant. He is a lawyer admitted to the Bar, at least one time, in the State of Colorado as I understand it. It strikes me that many of the motions that he filed in this case, at least some of the motions that he filed are clearly improper in light of the rulings Judge Redden made and in light of the fact that he has not appealed from that judgment. It also strikes me that there may be some other bases for Rule 11 sanctions and I have considered, and I'm not prejudging those.

I will look at the defendant's briefs and affidavits and hear his testimony if he wants to give it. I do believe that under the circumstances of this case that no individual should be permitted to attempt to harass so many people for so little reason, and so in that regard, I ask you to propose an injunction as broad as we reasonably can under the law. I have no doubt, also, that shortly after this decision in this case is entered that I will also be the subject of another lawsuit and probably the subject of a motion to recuse which will be evaluated if and when it occurs, but, let me ask you this: Is the defendant still practicing medicine in the State of Oregon? **(TYLER NOTE--THIS IS OUTRAGEOUS, JUDGE PANNER KNEW OR SHOULD HAVE KNOWN THAT TYLER HAS NEVER PRACTICED IN OREGON SUBJECT OF THE SUIT FRAUDULENTLY DISMISSED BY JUDGE REDDEN.)**

MR. BLUNCK: I don't believe he is, at least it's hearsay, Your Honor, but I don't believe he is practicing medicine in Oregon. I might add that in the exhibits we submitted to the -- submitted AN EXHIBIT that he is admitted to practice law in the State of California. So he is a person who is familiar with the law and I think should be held to the standard of a lawyer.

THE COURT: All right. And you can -- is there anything else that needs to be taken care of today, Mr. Blunck?

MR. BLUNCK: No, I think we've covered it Your Honor.

THE COURT: All right. Well be in recess. (Recess)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON No. 87-601-PA ANTHONY YTURRI, et al., Plaintiffs, v. DONALD E. TYLER M.D., Defendant

NOTICE OF PERJURY BY PLAINTIFF CARL BURNHAM, JR. AND CONSPIRACY TO COMMIT PERJURY

COMES NOW the defendant who continues to claim that The Honorable Owen lacks jurisdiction of this case and that this court lacks subject matter jurisdiction.

Defendant hereby and herein notices the court of perjury by Carl Burnham, Jr., before this Court on April 11, 1988, and the inference that Carl Burnham, Jr., his counsel Lawrence Blunck, other members of the law firm of which Mr. Blunck is a member, and all of the plaintiffs committed conspiracy to commit perjury.

PERJURY NO. 1.

Defendant directs the attention of the Court to the reporter's transcript of the so-called, fraudulent "trial" held in Pendleton, Oregon, April 11, 1988. On Page 9, ll. 22-23, in reference to "the action before Judge Redden," Carl

Burnham, Jr., knowing it was false stated under oath, "We then filed motions to dismiss in the State Court on the grounds of collateral estoppel." That statement was directed to a material issue. The exhibits admitted and findings and holdings of this Court relate to lawsuits commenced by the defendant in Colorado. No issue was raised by Hartford or any other defendant either in the state court or in the federal court of possible applicability of the doctrines of collateral estoppel or res judicata in the case fraudulently before Judge Redden, # 86-854-RE, the lawsuit upon which this Court claims a basis for jurisdiction. The statement was made to provide this Court color or pretext for justification for an injunction fraudulently based wholly or in part upon lawsuits in Colorado prior to commencement of # 86-854-RE.

PERJURY NO. 2

Attention is directed to the "trial" transcript, p. 5, ll. 18-19. In answer to the status of the case proposed herein to be stopped by injunction, **Carl Burnham, Jr., knowing it was false, stated under oath, "Judge Jackson dismissed the complaint as being frivolous."** The case was dismissed under color of Rule 21, ORCP, by holding that the case had been previously litigated and was barred by res judicata. Carl Burnham's false testimony directed to **a material issue**. His false testimony was designed to conceal the fact from the record of this case, and provide "plausible deniability" for this Court, that the Oregon Court of Appeals is reviewing the issue of res judicata in the case to be stopped by the proposed injunction.

The following Oregon statute prohibits such activity. ORS 162.065 Perjury. (1) A

person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false. (2) Perjury is a Class C felony.

The inference is clear that Burnham and his counsel Lawrence P. Blunck, other lawyers in the firm of which Mr. Blunck is a member, and all of the plaintiffs in addition to Mr. Burnham conspired to commit each and both of the aforementioned perjuries. The coordination of all of the activities of the plaintiffs, all practicing lawyers, is well documented in attorney fees submitted in the case pending in the state court. In this instant case they are all represented by Mr. Blunck and his firm, and the inference is clear that all approved the perjury before it was committed. The lack of the complete record of the prior case, in disregard of all pertinent legal

precedence brought to the attention of the Court, and the lack of the record of the case subject of the proposed injunction se up those perjuries. This action reeks with collusion.

ORS 161.450 provides in pertinent part: "Conspiracy" described. (1) A person is guilty of criminal conspiracy if with the intent that conduct constituting a crime punishable as a felony or a Class A misdemeanor be performed, the person agrees with one or more persons to engage in or cause the performance of such conduct. (2) Criminal conspiracy is a: *** (c) Class C felony if an object of the conspiracy is a Class C felony.

The "cleans (sic) hands doctrine" should apply. The following is pertinent:

"He who comes into equity must come with clean hands. The well-established principle expressed in this maxim is one

of ancient origin and broad application. It is a cardinal maxim and the expression of the elementary and fundamental conception of equity jurisprudence. Although not the source of any distinctive doctrine, it furnishes a most important and universal rule affecting the entire administration of equity jurisprudence as a system of remedies and remedial rights. *** It means that equity refuses to lend its aid in any manner to one seeking its active interposition who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief. *** has nothing to do with the rights or liabilities of the parties, but is invoked in the interest of the public on grounds of public policy and for the protection of the integrity of the court." (emphasis added) 30 CJS Equity s.93, pp. 1006-1012.

By not dismissing this action before,

this Court has condoned, approved, and ratified the unlawful and criminal acts of the plaintiffs that were committed before other judges. The aforementioned felonious acts were committed by the plaintiffs in this case before this Court. If this Court issues the proposed judgment and injunction, it clearly condones, approves, and ratifies felonies. This Court should dismiss this action and discontinue aiding the unlawful avoidance of payment of damages.

DATED: May 23, 1988 Submitted by:

(signed) Donald E. Tyler, M.D.

AFFIDAVIT

The foregoing statements are true to my knowledge and belief and made and submitted by me in good faith and not for purposes of harassment or unnecessary delay. (signed) Donald E. Tyler, M.D. AFFIANT.

STATE OF OREGON

County of Malheur ss.

The foregoing was sworn to and subscribed to before me by Donald E. Tyler, M.D., in Ontario, Malheur County, Oregon, on May 23, 1988 (signed) NOTARY PUBLIC My commission expires: (copy illegible) Submitted by (signed) Donald E. Tyler, M.D. DEFENDANT, pro se

(ADDED NOTE -- PERJURY AND CONSPIRACY TO COMMIT PERJURY HAVE NOT BEEN REFUTED AND DOCUMENTS PROVING PERJURY ARE APPENDED TO DEFENDANT'S MOTION TO STAY PENDING APPEAL submitted August 22, 1988 and Appendix p. A- .)**

COMPLAINT of case subject of injunction

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR

DONALD E. TYLER, M.D., Plaintiff v. HARTFORD INSURANCE GROUP, YTURRI, ROSE, BURNHAM, EBERT & BENTZ, ANTHONY YTURRI, CARL BURNHAM, JR., CLIFF S. BENTZ, TERESA

J. HUTCHENS, DEBBIE FREEPONS CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, THOMAS L. ROBERTS, EDWIN G. RULAND, DONALD P. SMITH, JR., HOLMES, DeFRANCQ & SCHULTE, P.C., KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, X INSURANCE COMPANY, a fictitious name, XX INSURANCE COMPANY, a fictitious name, Y INSURANCE COMPANY, a fictitious name, YY INSURANCE COMPANY, a fictitious name, Z INSURANCE COMPANY, a fictitious name, and ZZ INSURANCE COMPANY, a fictitious name, Defendants.

COMPLAINT

Obstruction of Justice , Fraudulent use of legal proceedings, Racketeering, Personal injury. No. 87-04-21572-L Filed April 29, 1987 **CLAIM FOR RELIEF: UNLAWFUL INTERFERENCE WITH AND OBSTRUCTION OF JUSTICE AND BY FRAUDULENT USE OF LEGAL PROCEEDINGS PURSUANT TO CONSPIRACY**

1.

The PLAINTIFF complains of defendants jointly and severally and for cause of action alleges the following.

2.

Acts subject of this complaint occurred in the County of Malheur of the State of Oregon.

3.

Defendants herein and each of them conspired with each other and with others to unlawfully intentionally obstruct, impair, and hinder the administration of law and judicial function in lawsuits in which the plaintiff had and has an interest and to fraudulently use legal proceedings to damage and injure the plaintiff. Pursuant to that conspiracy the defendants herein and each of them and by acts of their coconspirators committed unlawful and criminal acts alleged herein.

Pursuant to conspiracy the defendants and each of them acted falsely and fraudulently to intentionally intimidate and cause the plaintiff injury by insulting, humiliating, and disparaging him in his professional qualifications. At all times pertinent herein defendants and their coconspirators knew that the plaintiff was and is qualified to practice medicine and surgery. In truth, after completing required premedical education at U.C.L.A., he graduated from and received the degree of Doctor of Medicine from the University of Oregon Medical School in 1950, and was one of three in his class elected in his junior year to the Alpha Omega Alpha Honor Society. He served as a medical officer in the Navy during the Korean War. His postgraduate training included a rotating internship and residency in pathology at the

University of Utah and a four year fellowship at the Mayo Clinic in general surgery and urology. He was an instructor in urology at the University of Utah Medical School from 1959 to the fall of 1964. In February, 1964, he was certified by the American Board of Urology. He was licensed to practice medicine by examination in the State of Oregon in 1951. He has authored articles based upon his original research in eight major medical journals and has authored three scientific books.

5.

The defendants and each of them knowingly and intentionally joined and acted pursuant to an ongoing, continuing conspiracy to unlawfully and illegally interfere with and obstruct justice in lawsuits in which the plaintiff had and has an interest and which included extremely outrageous conduct committed

pursuant to conspiracy to cause the plaintiff severe emotional distress. They had knowledge of acts committed pursuant to that conspiracy prior to their joining the conspiracy, and they acted pursuant to that conspiracy to cause the plaintiff injury and damage as herein alleged. Defendants include insurance companies who employed named individual and law firm defendants to commit the wrongful, unlawful, and criminal acts subject of this complaint, and who directed, approved, and ratified those acts which were done for their benefit. The names of those insurance companies are unknown and they are designated by fictitious names in accord with Rule 20.H., O.R.C.P., and plaintiff requests their true names be added as defendants by amendment when known.

The defendants and each of them are **liable for all damages proximately resulting from all acts committed pursuant to that total overall conspiracy** which they joined and in which they participated regardless of who committed them or where or when they were committed. Furthermore, and in addition, the defendants are liable for all injuries and damages to the plaintiff alleged herein from all acts alleged herein because of their having been proximately caused by **intentional acts of defendants and others which have combined to produce an indivisible, unapportionable injury**. Acts committed intentionally to damage the plaintiff pursuant to the conspiracy subject of this complaint and damages which have been the proximate result thereof follow.

7.

The reason or motive of the defendants herein for their acts is that there was and is no legitimate defense for the lawsuits illegally obstructed subject of this complaint, and the acts of the defendants are admissions of that.

8.

Defendants herein are jointly and severally responsible for and liable for damages proximately caused by all acts committed pursuant to aforementioned continuing conspiracy including but not limited to damages alleged in **EXHIBIT A** , appended hereto and incorporated herein by this reference, and they are jointly and severally responsible for and liable for damages for all other acts alleged herein. **Acts committed pursuant to the conspiracy** which proximately caused the plaintiff damages **for which defendants herein are liable** (paragraphs where details are found

in EXHIBIT A are noted in parentheses below) include but are not limited to:

(1) acts which illegally deprived the plaintiff the benefit of a jury verdict in his favor in the amount of $730,000.00 plus interest, (detailed in paragraphs 25-31 of EXHIBIT A, appended hereto and incorporated herein by this and other references),

(2) theft and illegal destruction of 50 depositions consisting of over 3000 pages prior to trial which were the property of the plaintiff, evidence prior to trial, and evidence after trial before appeal, by judges of the Colorado Court of Appeals and its clerk, and their illegal, outrageous, fraudulent acts to replace them with copies that would be legally useless in pending trials, for the purpose of illegally denying plaintiff his right of trial and to obstruct justice. Such fraudulent copying under guise of

"reconstruction" included acts by their agent Debbie Freepons Craig acting in Ontario, Oregon, where those Colorado judges including defendants herein Smith and Ruland had a complete lack of jurisdiction, and where they were not acting in any judicial capacity, and she acted pursuant to instructions by aforementioned judges, (paragraphs 15, 18-22, EXHIBIT A),

(3) theft of depositions, property of the plaintiff, (paragraph 18),

(4) extortion of the plaintiff by judges of the Colorado Court of Appeals, (paragraph 20),

(5) concealment and destruction of trial transcripts, (paragraph 27, EXHIBIT A),

(6) fraudulent fabrication of facts and fraudulent opinions by members of the Colorado Court of Appeals and by members of the U.S. Court of Appeals for the Tenth Circuit, (paragraphs 23, 46, 51),

(7) illegal, unlawful order by Federal Judge Sherman Finesilver requiring plaintiff to post a bond in the outrageous amount of $48,000.00 fraudulently called a "cost bond" in the U.S. District Court for the District of Colorado under color and pretext of Colorado State statutes allowing order of cost bond for non-residents to use Colorado state courts, coupled with the illegal threat that he would illegally in his unrestricted power order payment of attorney fees of defendants from that bond. Because plaintiff refused to post such bond as a condition to sue in the United States District Court and in an antitrust action not allowing defendants attorney fees in any instance, Finesilver, pursuant to conspiracy subject of this complaint, unlawfully dismissed the involved lawsuit, illegally depriving the plaintiff right to trial, (paragraphs 46-52, EXHIBIT A),

(8) illegal denial of plaintiff's right to trials in state and federal courts of the state of Colorado, and in effect illegally closing the courts in Colorado for his use as a plaintiff,

(9) unlawful changes in transcripts of trial proceedings to fraudulently falsify them, (paragraph 27, EXHIBIT A),

(10) perjury and subornation of perjury by lawyers, (paragraph 24, EXHIBIT A),

(11) jury tampering, (paragraph 26, EXHIBIT A),

(12) fraud by lawyers, (41, 46)

(13) initiation of a fraudulent lawsuit against the plaintiff through fraud and collusion by Hartford Insurance Co., (paragraphs 41-43, EXHIBIT A),

(14) **breach of plaintiff's professional liability insurance** by a member of Hartford Insurance Group, to intimidate plaintiff to illegally prevent his rightful use of courts and to prevent his

rightfully continuing to prosecute lawsuits in progress, **while the plaintiff was residing in Ontario, Oregon,** in addition to when he was residing in Colorado. (paragraphs 41-45, EXHIBIT A).

(15) abuse of use of a committee of the Colorado Medical Society, the Colorado Board of Medical Examiners, and the Grievance Committee of the Colorado Supreme Court by Hartford and coconspirators including St. Paul Insurance to threaten and abuse the plaintiff to prevent and interfere with the plaintiff's rightful use of courts involving lawsuits then in progress and to prevent plaintiff from rightfully seeking remedy by future lawsuits, (paragraphs 44-45, 39-40, 38)

(16) unlawful, unethical, immoral requirement of plaintiff to give his **permission to Hartford Insurance to examine private,** personal, medical records

of all patients cared for by plaintiff in hospitals as a precondition to renew his professional liability insurance to intimidate and punish the plaintiff to prevent his continuing to prosecute lawsuits then in progress against physician conspirators who were insured by Hartford and to prevent his initiating other lawsuits for damages due to acts committed pursuant to aforementioned conspiracy. (paragraphs 44-45, EXHIBIT A).

9.

On June 3, 1986, the plaintiff properly commenced Civil action No. 86-06-20969-L by filing a complaint in the Circuit Court of the State of Oregon for the County of Malheur in Vale, Oregon. At **8:33 A.M., Monday, July 7, 1986**, prior to any responses from defendants, in accord with Rule 23, Oregon Rules of Civil Procedure, the plaintiff rightfully filed in the

aforementioned state court an **AMENDED COMPLAINT**, copy of which is appended hereto as **EXHIBIT A**, with its exhibits A through I. At all times pertinent herein all defendants and coconspirators named herein knew that **at that instant the "complaint" was no longer a pleading** or a part of the record as enunciated by the Oregon Supreme Court in Wells v. Applegate, 12 Or 208, 6 P 770 (1885) and in Noonan v. City of Portland, 161 Or 213, 88 P.2d 808 (1938), and by the U.S. Supreme Court in Young v. Martin, 8 Wall 354, 19 L.Ed. 418 (1869). A copy of that **amended complaint, with filing time and date stamped as in EXHIBIT A**, and certified by the plaintiff on an attached page that it was filed in the state court July 7, 1986, **was mailed on July 7, 1986**, by certified mail with acknowledgment of receipts to defendants Hartford, (represented by Yturri, et al.), Judges

Smith, Ruland, Foote, Vollack, Roan, Bockman, (represented by Carter), attorney Craig (represented by Carter and Roehr), Roberts (represented by K. Roberts), Bobbitt, Reid, Ferrin, (represented by Dave Frohnmayer, Attorney General of the State of Oregon, and Thomas K. Elden, Assistant Attorney General of the State of Oregon), and Judge Finesilver (Turner and Kobbervig). Kostol (represented by Frohnmayer and Elden) refused to accept delivery of the certified mail. Service of summonses and complaints upon the remainder of the defendants was illegally interrupted by acts subject of this complaint.

10.

On or about July 3, 1986, and at other times since, Charles H. Turner and Judith Kobbervig, acting in conflict with their primary duty as United States Attorneys to prosecute for offenses against the United

States, conspired with defendants herein and they and all defendants herein joined and acted pursuant to an ongoing conspiracy to unlawfully interfere with and obstruct the plaintiff's prosecution of the case of which **EXHIBIT A** is the AMENDED COMPLAINT including acts designed to deprive the plaintiff of his right to trial of that case in a court of the State of Oregon having legal jurisdiction. Knowingly joining the total conspiracy subject of this complaint Turner and Kobbervig acted pursuant to the total conspiracy as follows:

(a) On July 3, 1986, knowing their misrepresentations were false and with the intent to enable themselves, defendants, and named coconspirators to fraudulently use legal proceedings and to thereby obstruct justice and injure and damage the plaintiff, they illegally filed in the U.S. District Court for the District of

Oregon in Portland, Oregon, a false and fraudulent document labeled as a "petition for removal" of the lawsuit of **EXHIBIT A** to that court, copy appended hereto as **EXHIBIT B** (without the 24 page accompanying document presented as the "complaint"). Without claiming to represent any defendant in that case, and without prior court order authorizing them to act, they were strangers to the case, illegal meddlers, and **not acting within the duties of their offices.** All defendants herein and their named coconspirators including Turner, Kobbervig, Thomas K. Elden, Dave Frohnmayer, Judge Redden, and Judge Yraguen at all times pertinent knew that a non-party could not remove a case from state to federal court as decided long ago in First Nat. Bank v. Pancake, 172 NC 513, 90 S.E. 515 (1916), in State v. Barnes, 5 ND 350, 65 N.W. 688 (1895), and

in Nelson v. Peter Kiewit Sons' Co., 130 F.Supp. 59, (1955, NJ). Turner and Kobbervig by their aforementioned acts committed pursuant to conspiracy intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of economic interference and obstacle in violation of ORS 162.235 (Obstructing judicial administration) and by such unlawful and criminal acts committed pursuant to conspiracy subject of this complaint they intentionally proximately caused the plaintiff injury and damage as herein alleged.

(b) Pursuant to the conspiracy subject of this complaint, at 10:26 A.M., July 9, 1986, coconspirators Turner and Kobbervig illegally fraudulently filed a copy of the aforementioned bogus petition and a false fraudulent "Notice of filing of petition for removal" in the Circuit Court of

Oregon for Malheur County, in Vale, Oregon, copy of notice and cover letter appended hereto as **EXHIBIT C**. With the intent pursuant to conspiracy to provide pretext for all defendants herein and their coconspirators to unlawfully act in the federal court to damage the plaintiff, **they falsely and fraudulently stated and claimed in writing** that "Defendant, United States of America filed ...a Petition for Removal ... ." Coconspirators Turner and Kobbervig at all times pertinent knew that the foregoing statement was false and that the truth was that the United States of America was not a defendant, and that the United States of America did not file a petition for removal. At all times pertinent herein the **defendants and all their coconspirators named herein knew that a suit against an officer of the United States is not a suit against the United States** and that many courts have

held that including the U.S. Supreme court in Philadelphia Company v. Stimson, 223 U.S. 605 (1911). The truth is, Turner and Kobbervig themselves, not claiming to represent any defendant, unlawfully filed the bogus fraudulent petition for removal which is clear on the face of the so-called "petition." Turner and Kobbervig knowingly made the foregoing false statements in writing to Judge Yraguen, a public servant, in connection with an application for a benefit in **violation of ORS 162.085, (Unsworn falsification)** and as a proximate result of that criminal act committed pursuant to conspiracy subject of this complaint the plaintiff was injured and damaged as herein alleged. Turner and Kobbervig by their aforementioned acts committed pursuant to conspiracy intentionally obstructed, impaired, and hindered the administration of law and judicial

function by means of economic interference and obstacle in violation of ORS 162.235 (Obstructing governmental or judicial administration) and as a proximate result of those criminal acts committed pursuant to conspiracy subject of this complaint, the plaintiff was proximately damaged as herein alleged.

11.

The aforementioned illegal and fraudulent acts of Turner and Kobbervig committed as coconspirators of defendants pursuant to the conspiracy subject of this complaint and which all defendants herein ratified and for which they are liable were false representations of matters of fact which were intended to provide coconspirator Judge F.J. Yraguen pretext for not legally acting in the lawsuit of EXHIBIT A. At all times pertinent coconspirator Yraguen was Judge of the Circuit Court of the State of Oregon for the County of Malheur

and who at all times pertinent herein had legal jurisdiction of the lawsuit of which EXHIBIT A is the Amended Complaint. Pursuant to conspiracy, at all times after July 9, 1986, and on November 18, 1986, coconspirator Judge Yraguen refused and continued to refuse to decide pending motions before him or to proceed in any other legal way with the lawsuit of which EXHIBIT A is the Amended Complaint.

12.

Pursuant to conspiracy, letters were written on or about November 19, 1986, by **Defendant Kenneth E. Roberts** and on or about November 24, 1986, by coconspirator Thomas K. Elden to the Hon. Frank J. Yraguen and received by him in Vale, Malheur County, Oregon, each falsely and fraudulently stating that the case of EXHIBIT A had been removed to the federal court. Defendant Kenneth E. Roberts and coconspirator Elden knew their statements

were false when they wrote them and they wrote them pursuant to conspiracy with the intent to provide pretext for Judge Yraguen to not legally act according to his legal duty in the lawsuit of EXHIBIT A, and with the intent to thereby obstruct justice and injure and damage the plaintiff. As a proximate result Judge Yraguen refused to decide pending motions before him or to proceed in any other legal way with the lawsuit of which EXHIBIT A is the Amended Complaint. Defendant Kenneth E. Roberts and coconspirator Elden by their aforementioned acts committed pursuant to conspiracy intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of economic interference and obstacle in violation of ORS 162.235, and as a proximate result of those criminal acts committed pursuant to conspiracy subject

of this complaint, the plaintiff was proximately injured and damaged as herein alleged.

13.

Pursuant to conspiracy subject of this complaint, the aforementioned **bogus petition and filing of it** in the federal court and copy of it in the state court **by Turner and Kobbervig did not even provide color of conforming to mandatory requirements of 28 USC s.1446**, copy appended hereto as **EXHIBIT D**. At all times herein all defendants and each of them and coconspirators Turner, Kobbervig, Elden, Yraguen, and Redden knew that the requirements of the removal statutes are jurisdictional; and they knew that the removal statute must be strictly construed in favor of state court jurisdiction. At all times herein defendants and each of them and coconspirators Turner, Kobbervig, Elden, Yraguen, and Redden knew that 28

U.S.C. s.1446 states "Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States ... a verified petition ...statement of facts entitling ...to removal together with a copy of all process, pleadings and orders served upon him ...

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond ... defendants will pay all costs ... not removable or was improperly removed.

(e) Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State

court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded." (emphasis added)

None of those mandatory, jurisdictional requirements were complied with and none were waived by the plaintiff who insisted upon their compliance by motion to remand to the state court. Pursuant to conspiracy:

(a) the bogus so-called petition was not filed by a defendant, which all defendants herein and named coconspirators knew was a jurisdictional requirement and pronounced to be so by the U.S. Supreme Court in Ayers v. Watson, 113 U.S. 594, 5 S.Ct. 641, 28 L.Ed. 1093 (1885) and is established law cited in 76 C.J.S. p. 1056; and defendants herein and named coconspirators at all times pertinent knew that a non-party could not remove ;

(b) it was not verified by a defendant (sworn to by an affidavit);

(c) it did not contain required contents; (Defendants and named coconspirators knew at all times pertinent that a federal officer must set forth all the circumstances and positively explain his relation to the matter and showing that it was confined to his acts as an officer as decided by the U.S. Supreme Court in Maryland v. Soper (No.1), 270 U.S. 9 (1926);

(d) it was not accompanied by a bond; (Defendants and named coconspirators knew at all times pertinent that the requirement was **mandatory** even if the petition was filed by the U.S. Attorney as pronounced in Nelson v. Peter Kiewit Sons' Co., 130 F.Supp 59, 1955, DC NJ.); and

(e) the copy of the petition for removal was not filed with the clerk of the state court by a defendant to effect a removal.

Pursuant to conspiracy, defendants and named coconspirators extremely outrageously flaunted their total, unlimited, arbitrary power to totally disregard the mandatory requirements of the removal statutes to intimidate and injure the plaintiff including causing him to suffer severe emotional distress. **On the face of the record, the lawsuit of EXHIBIT A was not removed to the federal court and the federal court at all times pertinent herein did not have jurisdiction** and at all times pertinent herein each and all of the defendants and coconspirators named herein knew that.

14.

On July 15, 1986, the Plaintiff rightfully and properly submitted by certified mail to the United States District Court for the District of Oregon a motion to remand the case to the state court. Pursuant to conspiracy, all defendants herein and

named coconspirators acted deceitfully and illegally as if jurisdiction of the lawsuit of EXHIBIT A was in the federal court which they knew was false.

15.

Pursuant to the total conspiracy subject of this complaint, coconspirator **Hon. James A. Redden**, judge of the U.S. District Court for the District of Oregon, who knew at all times pertinent herein that he lacked jurisdiction, on July 16, 1986, and at all times thereafter pertinent herein, knowingly unlawfully refused and continued to refuse to remand the case of EXHIBIT A to the state court. Pursuant to conspiracy, on September 2, 1986, he unlawfully denied the plaintiff's motion to remand and then retracted it the same day. Pursuant to conspiracy, on October 16, 1986, after three months' delay, he again **knowingly unlawfully denied plaintiff's motion to remand,**

fraudulently holding that Judge Finesilver properly removed the case to the federal court which was false and at all times pertinent herein Judge Redden knew that it was false. On the face of the petition, Finesilver did not remove the case himself or by anyone claiming to represent him, the petition was not verified by Finesilver, no bond accompanied the petition, and Finesilver did not file a copy of the petition with the clerk of the state court which was necessary to effect the removal. Pursuant to conspiracy, by the aforementioned acts Judge Redden intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of economic interference and obstacle in **violation of ORS 162.235** (Obstructing governmental or judicial administration), and as a proximate result of his unlawful and criminal acts committed pursuant to

conspiracy subject of this complaint the plaintiff was injured and damaged as herein alleged.

16.

Pursuant to conspiracy subject of this complaint, no defendant herein or named coconspirator at any time took any appropriate action or made any motions to move either the complaint or the amended complaint of the case of EXHIBIT A from the state court to the federal court in accord with **28 USC ss. 1447 and 1449**, copies appended hereto as **EXHIBIT E**. Even if the case had been properly removed, which it was not, without the original or rertified copy of the AMENDED COMPLAINT, Redden had no color of jurisdiction **for that reason as well as for the reason that the claimed removal was false and fraudulent when he fraudulently unlawfully denied the plaintiff's motion to remand on September 2, 1986, and on October 16,**

1986. Redden was notified that the bogus petition was filed on July 9, 1986, in the state court by mail to him on July 11, 1986, August 4, 1986, and August 7, 1986. He was notified that the amended complaint was filed July 7, 1986, in the state court by mail to him on July 11, 1986, August 4, 1986, and on August 13, 1986, when, by way of notice and continuing to contest jurisdiction of the federal court, the plaintiff mailed to Redden copies of the amended complaint seeking relief in the state court with the date it was filed and other documents filed in the state court including Hartford's motion to dismiss. At no time died the plaintiff submit a motion to amend the complaint in the federal court pursuant to Rule 15, F.R.C.P. At all times pertinent all defendants and coconspirators named herein named knew that without original or certified copies of pleadings, a court has

no jurisdiction to decide the issues of the pleadings, a complete lack of subject matter jurisdiction. (71 C.J.S. p.17). Pursuant to conspiracy, the origin of the "complaint" that was filed with the bogus non-verified petition for removal was not revealed and was not even claimed to be a photocopy of the original complaint or even of a copy served upon a defendant. At all times pertinent herein, all defendants and coconspirators Turner, Kobbervig, Elden, Yraguen and Redden knew that the "complaint" filed by Turner and Kobbervig in the federal court was not even verified by affidavit to be a copy of the original filed with the clerk of the state court or even a copy of a copy served upon a defendant. Pursuant to conspiracy that dubious document having no legal significance is the so-called "complaint," to which motions by defendants were fraudulently directed in

the federal court and upon which Judge Redden pursuant to conspiracy fraudulently based his illegal fraudulent decisions, opinions, dismissal of the lawsuit subject of EXHIBIT A, and his outrageous illegal order to the plaintiff to pay Hartford's attorney fees and costs.

17.

Acting pursuant to the conspiracy subject of this complaint, on or about August 4, 1986, **Defendant Craig**, a lawyer practicing in Oregon, in fraud knowing the court lacked jurisdiction, submitted to the U.S. District Court for the District of Oregon, in Portland, Oregon, in the lawsuit of **EXHIBIT A** a false, fraudulent affidavit claiming that her employment by the Colorado Court of Appeals ended prior to June, 1978. After the plaintiff submitted documents that proved that to be false, Craig submitted another affidavit to the same court on or about August 21, 1986,

signed August 19, 1986, affirming that she was employed by the court in May, 1979. In that affidavit, dated August 19, 1986, pursuant to the total conspiracy subject of this complaint, Craig with the intent to provide coconspirator Redden color of a pretext to dismiss the lawsuit of EXHIBIT A declared under oath, "I have not had any contact with plaintiff Donald E. Tyler or **his legal affairs** at anytime since that date." (emphasis added). That declaration was false and fraudulent and Craig knew it was false when she swore to it and when she submitted it to the court. She wrote a letter from Oregon dated Nov. 29, 1982, addressed to the clerk of the Colorado Court of Appeals concerning the destruction of depositions and trial exhibits subject of EXHIBIT A, copy of which letter was sent contemporaneously to the plaintiff by the clerk. That letter most certainly constituted "contact with

legal affairs of Donald E. Tyler," plaintiff herein. The letter was connected to obstruction of justice by cover-up of the deliberate illegal theft and destruction of those depositions and exhibits. Craig's false affidavit was submitted to support false fraudulent claims that the lawsuit of EXHIBIT A was barred by statutes of limitation. Craig's affidavit, a sworn statement in regard to a material issue, was made by Craig knowing it to be false, clearly **a violation of ORS 162.065 (Perjury, a Class C felony).** Pursuant to conspiracy subject of this complaint by the afcrementioned acts Craig intentionally obstructed, impaired, and hindered the administration of law and judicial function by economic interference and obstacle in **violation of ORS 162.235** (Obstructing governmental or judicial administration), and as a proximate result of the foregoing unlawful

and criminal act committed pursuant to conspiracy subject of this complaint Craig injured and damaged the plaintiff as herein alleged.

18.

At all times and places pertinent herein **Defendant Frederic P. Roehr was acting as an agent of Defendant Vergeer, Roehr & Sweek** which is responsible and liable for his acts alleged herein and subject of this complaint.

19.

Pursuant to the conspiracy subject of this complaint, the aforementioned false fraudulent affidavit by Craig signed August 19, 1986, was submitted to the U.S. District Court for the District of Oregon on or about August 21, 1986, by Craig and by **Defendant Frederic P. Roehr** who both knew that it was false and fraudulent and both of them knew at all times pertinent herein that the aforementioned federal

court lacked jurisdiction of the case of EXHIBIT A. With the intent that conduct constituting a crime punishable as a felony be performed, **Roehr agreed with Craig** to engage in or cause the performance of such conduct in **violation of ORS 161.450, (Conspiracy).** Their acts committed pursuant to conspiracy including the total conspiracy subject of this complaint proximately damaged the plaintiff as herein alleged. Roehr and Craig pursuant to conspiracy intentionally obstructed, impaired, and hindered administration of law and judicial function by means of economic interference and obstacle in **violation of ORS 162.235**, which proximately caused injury and damage to the plaintiff as herein alleged.

20.

On or about July 24, 1986, **Defendant Kenneth E. Roberts** pursuant to conspiracy with **Defendant Thomas L. Roberts** and

pursuant to the total conspiracy subject of this complaint submitted to the U.S. District Court for the District of Oregon in Portland, Oregon, in the case subject of EXHIBIT A, in fraud knowing that the court lacked subject matter jurisdiction, a "Memorandum of law in support of Motion of Thomas L. Roberts to dismiss." With the intent to provide coconspirator Judge Redden color of pretext to fraudulently dismiss the lawsuit of EXHIBIT A, in that memorandum they falsely misrepresented and misquoted a case, knowing that their quotation was falsified, to provide some color to a claim opposite established legal precedence on a material issue. At all times pertinent herein, all defendants and named coconspirators herein knew that the law is well established by legal precedence that a conspirator acts as an agent of all coconspirators, and that the act of a conspirator in a state provided

basis for personal jurisdiction of courts in that state of all coconspirators whether or not they personally have been in the state. Pursuant to conspiracy, in the lawsuit of which EXHIBIT A is the amended complaint, Craig and other coconspirators acted in Oregon, and coconspirators including defendant Thomas L. Roberts acting in Colorado fraudulently claimed lack of personal jurisdiction in Oregon courts based upon their not actually being in Oregon. Pursuant to conspiracy, Defendants Thomas L. Roberts and Kenneth E. Roberts, both lawyers, falsely and fraudulently misrepresented and misquoted First Interstate Bank v. Tex-Ark Farms, 71 Or App 427, 692 P.2d 678 (1984) as holding:

"Jurisdiction of the partnerships is not based on their agent's acts in Oregon. ..." (emphasis added)

Pursuant to conspiracy, defendants Kenneth Roberts and Thomas Roberts fraudulently added the word "not" to the quotation of the opinion to falsely represent the holding of the case as having the exact opposite meaning of the true holding. (at 692 P.2d 686). Defendants Kenneth E. Roberts and Thomas L. Roberts knowingly made the aforementioned false written statement to a public servant, Judge Redden, in connection with an application for a benefit in violation of ORS 162.085 (Unsworn falsification), and as a proximate result of that unlawful and criminal act the plaintiff was intentionally injured and damaged as herein alleged. By their aforementioned act committed pursuant to conspiracy subject of this complaint Defendants Kenneth E. Roberts and Thomas L. Roberts intentionally obstructed, impaired, and

hindered the administ ion of law and judicial function by means of economic interference or obstacle in violation of ORS 162.235 (Obstructing governmental or judicial administration, a Class A misdemeanor), and as a proximate result of that unlawful and criminal act the plaintiff was damaged herein as alleged. With the intent that conduct constituting a crime punishable as a Class A misdemeanor, ORS 162.235, be performed, Defendants Kenneth E. Roberts and Thomas L. Roberts agreed with each other to engage in or cause the performance of such conduct in violation of ORS 161.450 (Conspiracy).

22.

At all times and places herein Defendant James C. Carter was acting as an agent of Defendant Holmes, DeFrancq & Schulte, P.C. which is responsible and liable for his acts alleged herein and subject of this

complaint.

23.

Pursuant to the conspiracy subject of this complaint, on or about August 4, 1986, **Defendants Donald P. Smith, Jr.**, an attorney and judge of the Colorado Court of Appeals but not acting in that capacity, and **Edwin G. Ruland**, an attorney and former judge of the Colorado Court of Appeals not acting in that capacity, pursuant to conspiracy and acting through their attorney submitted in the case of EXHIBIT A to the U.S. District Court of the District of Oregon, in Portland, Oregon, in fraud knowing that the court lacked subject matter jurisdiction, in the case of EXHIBIT A affidavits **each deceitfully declaring** under oath, "At no time during the relevant periods alleged in the complaint did I travel to the state of Oregon **or engage in activities in the state of Oregon which in any way related**

to plaintiff or the acts alleged in the complaint." (emphasis added to fraudulent part) The aforementioned fraudulent statement was made by each of defendants Smith and Ruland pursuant to the conspiracy subject of this complaint to provide coconspirator Defendant Redden pretext to fraudulently dismiss the lawsuit of EXHIBIT A. Pursuant to conspiracy, coconspirator Judge Redden used those fraudulent statements as pretext to dismiss the case. The statements of Defendants Smith and Ruland were false implication and deceit in that defendant Debbie Freepons Craig acted as their agent in Oregon, and they are clearly responsible for and liable for her acts committed in Oregon. They planned and directed Craig's activities in Oregon, subject of the amended complaint of EXHIBIT A, and they were mailed by certified mail received by them on May 3,

and May 2, 1979, respectively, copy of the arrangements by the Colorado Court of Appeals for her trip to Ontario, Oregon, April 9, 1979, to copy depositions and other details. After receiving that notice by certified mail, they fraudulently and illegally accepted as part of the record on appeal the legally useless copies of depositions made by Craig on that trip to Oregon, knowing they would be legally useless to the plaintiff at trial, to obstruct justice subject of the total conspiracy, **ratifying her acts as their own.** Pursuant to the conspiracy subject of this complaint **Defendant James C. Carter** as agent for Smith and Ruland,and representing them as their attorney, submitted the foregoing deceitful affidavits of Smith and Ruland on or about August 4, 1986, to the U.S. District Court in the case of EXHIBIT A knowing that they were deceitful and

knowing that the court lacked jurisdiction of the subject matter of the lawsuit of EXHIBIT A. Pursuant to conspiracy, the aforementioned deceitful affidavits were submitted to obtain benefit from coconspirator Judge Redden of dismissal of the lawsuit of EXHIBIT A and specifically related to the fraudulent claims of judicial immunity when defendants Smith, Ruland, and Carter knew that **Smith and Ruland had no immunity for acts committed in the State of Oregon by their agent and where as judges they had no jurisdiction whatsoever.** At all times pertinent defendants Smith, Ruland, and Carter knew that the Colorado Court of Appeals held that immunity for acts by state government employees stopped at the Colorado border as held by the Colorado court in Peterson v. State of Texas, __Colo.App._, 635 P2d 241 (1981) and by the U.S. Supreme Court in Nevada v. Hall, 440 U.S. 410, 99 S.Ct.

1182 (1979). Smith, Ruland, and Carter intentionally obstructed, impaired, and hindered the administration of law and judicial function in violation of ORS 162.235, and as a proximate result of their unlawful and criminal acts committed pursuant to conspiracy the plaintiff has been injured and damaged as herein alleged. Pursuant to conspiracy the affidavits were insufficient to address the issue of the judges joining a conspiracy, an allegation that must be accepted as true. All of the defendants and coconspirator Redden knew at all times pertinent that the joining and participating in a conspiracy is not a judicial act and immunity does not apply as held in the Ninth Circuit Court of Appeals, supervisor of the U.S. District Court for the District of Oregon, in Rankin v. Howard, 633 F.2d. 844 (9th Cir, 1980).

24.

At all times pertinent herein defendants Anthony Yturri, Carl Burnham, Jr., Cliff S. Bentz, and Teresa J. Hutchens were acting as agents of Yturri, Rose, Burnham, Ebert & Bentz and as agents for Hartford Insurance Group which are responsible and liable for their acts and each of them. Supervising employees of Hartford joined and acted pursuant to conspiracy in Hartford's behalf and for Hartford's benefit and those acts were ratified by Hartford who is responsible and liable for all acts committed pursuant to the conspiracy.

25.

On July 9, 1986, pursuant to conspiracy between defendants Hartford Insurance Group, Hutchens, and Burnham, and pursuant to the total conspiracy subject of this complaint, **defendants Hutchens, Burnham, and Hartford** submitted to the Circuit

Court for the State of Oregon for the County of Malheur in the case of EXHIBIT A false and fraudulent statements in Hartford's "Motion to quash service and dismiss plaintiff's amended complaint," knowing they were false and fraudulent. False and fraudulent statements knowingly submitted included the statement that "Plaintiff's professional conduct as a physician was questioned and reviewed by a hospital review committee at Brighton Community Hospital in Brighton, Colorado, the Colorado Medical Society and Plaintiff's malpractice insurance carrier in Colorado, HARTFORD INSURANCE." Continuing in the same document, they falsely and fraudulently stated, "Plaintiff's refusal to cooperate with these reviews resulted in the cancellation of his liability insurance." Those statements, material to issues subject of the lawsuit of EXHIBIT A, were and are

totally false, and aforementioned defendants knew they were false when they submitted them to Judge Yraguen. Continuing knowing it was false they wrote the false fraudulent statement, "disbarment proceedings were initiated against the plaintiff." Pursuant to conspiracy this and other repeated extremely outrageous false libelous statements about the plaintiff concerning his professions and other extremely outrageous conduct and acts were made intentionally and maliciously by Hartford and other defendants herein and by coconspirator attorneys and judges to intimidate the plaintiff with their unlimited power to damage him with impunity and with the intention of causing the plaintiff to suffer severe emotional distress. Defendants Hartford, Hutchens, and Burnham knowingly made the aforementioned false written statements to

Judge Yraguen, a public servant, in connection with an application for a benefit in violation of ORS 162.075 (Unsworn falsification), and as a proximate result of that illegal and criminal act the plaintiff has been proximately injured and damaged as herein alleged. Defendants Hartford, Hutchens, and Burnham, by their aforementioned acts intentionally obstructed, impaired, and hindered the administration of law and judicial function in violation of ORS 162.235, and as a proximate result of those unlawful and criminal acts committed pursuant to conspiracy, the plaintiff was injured and damaged as herein alleged.

26.

In the same document as mentioned in the paragraph preceding this, pursuant to conspiracy subject of this complaint, Hartford, Hutchens, and Burnham wrote, "HARTFORD INSURANCE GROUP has an

authorized registered agent in Oregon. The name and address of HARTFORD INSURANCE GROUP'S registered agent is readily available through the Office of the Corporation Commissioner." That statement was false and fraudulent and defendants knew it was false and deceitful when they submitted it to the Circuit Court for the State of Oregon for the County of Malheur in the case of **EXHIBIT A** on or about July 9, 1986. The statement was false in the Hartford Insurance Group did not at times pertinent herein have a registered agent in Oregon. The statement was deceitful in that the real relevant issue is whether or not Hartford Insurance Group had such an agent in Malheur County, which it did not. At all times pertinent, aforementioned defendants knew that Rule 7,D. **Manner of service**, (3)(b)(ii), Oregon Rules of Civil Procedure, provides, "If a registered agent, officer, director, general partner,

or managing agent **cannot be found in the county** where the action is filed, the summons may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or **by personal service on any clerk or agent** of the corporation or limited partnership **who may be found in the county** where the action is filed;..." (emphasis added). The aforementioned fraudulent statement by defendants Hartford, Hutchens, and Burnham was made to deceive and provide color for the false fraudulent claim that Hartford was not properly served a summons and complaint and that as a consequence the court lacked personal jurisdiction of Hartford.

27.

Pursuant to conspiracy, on or about July 9, 1986, **defendants Hutchens, Burnham, and Hartford** submitted to the Circuit Court of Oregon for the County of Malheur a

fraudulent affidavit by Michael Miller in support of Hartford's motion to quash service. Service upon Hartford was by service upon Miller at his Hartford Insurance Agency in Ontario, Malheur County, Oregon. Miller admitted he was a sales agent for Hartford, but further stated, "I am not authorized and do not represent Hartford Insurance in any other manner, and further am not authorized to accept service on behalf of the Hartford Insurance Group." The defendants aforementioned knew at all times pertinent that service upon a foreign corporation can be obtained by serving an agent doing business for it in the county in which suit is brought if there is no specially authorized agent within the county. Pursuant to conspiracy at no time has Hartford or its attorneys claimed that an agent authorized to accept service of summons was present in Malheur County.

The fraudulent sworn statement was made and submitted to the court by defendants aforementioned knowing it was deceitful to provide color for the fraudulent claim that Hartford was not properly served a summons and complaint and that the court lacked personal jurisdiction of Hartford for that reason.

28.

Pursuant to conspiracy, on July 11, 1986, **Defendants Hartford, Burnham, and Bentz**, knowing that the U.S. District Court for the District of Oregon in Portland, Oregon, lacked any jurisdiction, fraudulently submitted to that court and Judge Redden a "Motion for extension of time to appear." Pursuant to conspiracy, in that written motion they made the fraudulent statement, "The United States Attorney has filed a Petition for Removal, apparently pursuant to 28 USC s 1442, **on behalf of all Federal Defendants."**

(emphasis added). The same statement was repeated in writing by the same defendants to the same court on August 4, 1986, in "Defendant's Hartford Insurance's Motion for Extension of Time to Appear." Defendants Hartford, Burnham, and Bentz knew at all times pertinent herein that the claimed removal was ineffective and fraudulent. All defendants and named coconspirators knew at all times pertinent herein that a party can act personally or "by and through" an attorney but that there is no allowance or provision in the federal rules for anyone not a party to petition for removal "on behalf of" any defendant.

29.

Pursuant to conspiracy, **Defendants Hartford, Burnham, and Bentz** in seeking benefit for Hartford from Judge Redden, a public employee, in support of motions by Hartford, repeatedly knowingly made and

submitted in writing to the U.S. District Court for the District of Oregon on or about July 11, 1986, on or about July 31, 1986, and on or about August 4, 1986, the false and fraudulent written statement that the plaintiff sued members of the Colorado Board of Medical Examiners. The aforementioned defendants knew the statement was false when they wrote it and when they submitted it at each of the aforementioned times, and as a proximate result of those unlawful acts committed pursuant to conspiracy they injured and damaged the plaintiff as herein alleged.

30.

Pursuant to conspiracy with each other and pursuant to the total conspiracy subject of this complaint, **Defendants Hartford, Burnham, and Bentz,** in fraud knowing that the court lacked subject matter jurisdiction, "In support of defendant Hartford Insurance's motion to dismiss,

strike and make more definite certain," submitted to the U.S. District Court for the District of Oregon and Judge Redden on or about August 4, 1986, false affidavits from employees or former employees of Hartford, W.R. Gregg and F.A. Fry. Fry declared "that all of the transactions and activities of Hartford Insurance Dr. Tyler alleges took place between 1971 and May, 1979 took place in Colorado and had consequences only in the State of Colorado." Gregg declared "that all of the transactions and activities of Hartford Insurance Dr. Tyler alleges took place between May, 1979 and June 1, 1983 took place in Colorado and had consequences only in the State of Colorado." Those affidavits were false and fraudulent, and were made and submitted knowing they were false because the plaintiff was living in Oregon when Hartford breached its insurance contract

with the plaintiff and the outrageous conduct of Hartford and its coconspirators was designed to and did inflict injury upon the plaintiff in Oregon during the referred to periods of times. Those were consequences in Oregon. Pursuant to conspiracy, they were also deceitful in that the amended complaint, EXHIBIT A, clearly alleges acts committed in the State of Oregon by coconspirators acting in Oregon. The aforementioned false fraudulent affidavits were made to provide pretext for coconspirator Judge Redden acting pursuant to conspiracy to claim that there was no personal jurisdiction of Hartford in conflict with **Oregon Rules of Civil Procedure Rule 4, C.,D., and I.(2)**. Pursuant to conspiracy, all defendants herein flaunted their illegal power to intimidate the plaintiff by total disregard of legal precedence and rules of civil procedure, including Rule 4. At all

times herein all defendants and coconspirators Turner, Kobbervig, and Redden knew that **Rule 4, ORCP,** in pertinent parts follows:

"**Personal jurisdiction.** A court of this state having jurisdiction of the subject matter has jurisdiction over a party served in an action pursuant to Rule 7 under any of the following circumstances:

C. Local act or omission. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or ...

I. Insurance or insurers. In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property, or risk and in addition either: ... or

I.(2) The person, property, or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; ..."

31.

Pursuant to conspiracy, knowing that the federal court lacked jurisdiction, on or about July 31, 1986, **defendants Hartford, and Burnham** fraudulently submitted to the U.S. District Court for the District of Oregon in the case of EXHIBIT A a "Memorandum in support of defendant

Hartford Insurance's motion against plaintiff's amended complaint" in which they made the false fraudulent written statement, "Plaintiff's professional conduct as a physician was questioned and reviewed by a hospital review committee at Brighton Community Hospital in Brighton, Colorado, the Colorado Medical Society and plaintiff's malpractice insurance carrier in Colorado, HARTFORD." The statement is false in each part and in its entirety and was made repeatedly by the aforementioned defendants knowing it was false. In the same document they repeated the false statement knowing it was false that the plaintiff's malpractice insurance was cancelled. Pursuant to conspiracy subject of this complaint those **false libelous statements** were made by the aforementioned defendants intentionally to insult and damage the plaintiff in abuse of privilege granted lawyers as officers of the court,

and to intimidate him with their completely unchecked, unlimited power to intentionally maliciously injure and damage him. Those false and fraudulent statements made in writing by defendants Hartford and Burnham were made to a public servant, Judge Redden, in connection with an application to obtain the benefit of motions in violation of ORS 162.085, (Unsworn falsification). As a proximate result of the aforementioned unlawful and criminal acts committed by defendants Hartford and Burnham pursuant to conspiracy, the plaintiff was injured and damaged as herein alleged. Defendants Hartford and Burnham by their aforementioned acts intentionally obstructed, impaired and hindered the administration of law and judicial function in violation of ORS 162.235, and as a proximate result of the foregoing unlawful and criminal acts committed

pursuant to conspiracy the plaintiff was injured and damaged as herein alleged.

32.

Pursuant to conspiracy with each other and pursuant to the total conspiracy subject of this complaint, knowing that the federal court lacked jurisdiction, on or about August 11, 1986, in application for benefit of summary judgment, **Charles H. Turner and Judith Kobbervig**, without claiming to represent any defendant and without written order of the court permitting them to intercede as non-parties, **submitted a memorandum** to the U.S. District Court for the District of Oregon in the case of EXHIBIT A. In referring to the case dismissed through fraud and collusion by federal judge Finesilver and judges of the U.S. Circuit Court of Appeals for the Tenth Circuit subject of the lawsuit of EXHIBIT A, the defendants falsely stated in writing

knowing it was false, "The complaint apparently arose out of the cancellation of Tyler's medical malpractice insurance." The Plaintiff Tyler's medical malpractice insurance was never cancelled. Knowing it was false, in the same document Turner and Kobbervig pursuant to conspiracy also repeated the false, fraudulent claim of the judges of the Circuit Court of Appeals, Defendants in EXHIBIT A, that Finesilver dismissed the case because Tyler did not obey an order to amend the complaint in that lawsuit. In truth, there was no order to amend the complaint. Pursuant to conspiracy, in his order denying motion to alter or amend judgment, Finesilver made it clear that the dismissal was because the plaintiff refused to post a bond in the amount of $48,000.00 as ordered. Pursuant to conspiracy, Turner and Kobbervig made the aforementioned false written statements,

knowing they were false, to a public servant, Judge Redden, in connection with an application for a benefit in violation of ORS 162.085 (Unsworn falsification), and as a proximate result of their unlawful and criminal acts committed pursuant to conspiracy the plaintiff was intentionally injured and damaged as herein alleged. By the aforementioned acts committed pursuant to conspiracy Turner and Kobbervig intentionally obstructed, impaired and hindered the administration of law and judicial function in violation of ORS 162.235 (Obstructing governmental or judicial administration), and as a proximate result of their unlawful and criminal acts committed pursuant to conspiracy subject of this complaint the plaintiff was intentionally injured and damaged as herein alleged.

Pursuant to conspiracy, on or about July 21, 1986, the same date Judge Redden ordered a "status conference," subject of following paragraphs, Defendant Carter, an attorney representing Colorado judges and Craig, defendants in EXHIBIT A, submitted to coconspirator Redden and the federal court, knowing it lacked jurisdiction, a "MOTION TO CONTINUE TIME TO RESPOND." In support Carter wrote, "Also, these defendants are uncertain as to the status of an amended complaint ..." (emphasis added).

34.

The aforementioned motion to continue time to respond submitted by Defendant Carter in which he mentioned uncertainty as to the status of the amended complaint was stamped as received by the clerk of the U.S. District Court for the District of Oregon on July 21, 1986. At some time

known to defendants and their coconspirators but unknown to the plaintiff, in the U.S. District Court in Portland, Oregon, pursuant to the conspiracy subject of this complaint, some coconspirator or coconspirators of defendants including coconspirator **Judge Redden fraudulently, falsely, and illegally caused the docket sheet to be changed and/or false entry made to provide false evidence that the aforementioned motion was not received until July 25, 1986.** The defendants herein are responsible for the injury and damages to the plaintiff intentionally caused by the aforementioned extremely outrageous and criminal act committed pursuant to the conspiracy subject of this complaint and in **violation of ORS 162.235**.

35.

Coconspirator Judge Redden had notice of the amended complaint and the date the

bogus petition was filed in the state court (July 9, 1986) in Hartford's "Motion for Extension of Time" submitted July 11, 1986, which Judge Redden granted on **July 21, 1986**. At the same time, and in the same document as the order granting Hartford time, **Judge Redden ordered an "in person status conference"** for September 2, 1986, copy appended hereto as **EXHIBIT F.**

36.

At some time between July 21, 1986, and September 2, 1986, at some place known to defendants but unknown to the plaintiff **defendants Roehr, Carter, Burnham, Hutchens, Bentz, and Hartford Insurance Group, ratified by defendant Anthony Yturri, conspired with each other and with coconspirators Thomas K. Elden and James A. Redden**, not acting in his capacity as judge. In that conspiracy which was and is a part of the total conspiracy subject of this complaint the aforementioned

defendants and coconspirators Elden and Judge Redden in effect agreed that they would fraudulently avoid determining the status of the "complaint" and "amended complaint," that all defendants deceitfully would direct motions and memoranda to the null and void "complaint," that they would deceitfully not amend any motions directed to the null and void "complaint," and that coconspirator Judge Redden fraudulently would use the null and void and non-certified copy of the "complaint" as pretext for his illegal fraudulent decisions and opinions. It was further agreed between the aforementioned defendants, Elden, and Redden that the "in person status conference" scheduled for September 2, 1986, would not consider the issue of the "status of the amended complaint" and no pending motion would be considered or decided. It was further

outrageously agreed in that conspiracy included in the total conspiracy subject of this complaint that the "in person status conference" scheduled for September 2, 1986, in Portland, Oregon, would be used fraudulently and unlawfully to insult, humiliate, and to intimidate the plaintiff, and to intentionally cause the plaintiff severe emotional distress by extreme outrageous conduct, to intentionally cause him mental suffering, and to unlawfully cause the plaintiff loss of time and money and other injury and damage.

37.

Pursuant to the aforementioned conspiracy and the total conspiracy subject of this complaint, defendants Carter, Roehr, Burnham, Hutchens, Bentz, the firm of Yturri, Rose, et al., and coconspirator Elden **did not appear and their clients, defendants in EXHIBIT A, were not**

represented at that ordered conference held in Portland, Oregon, September 2, 1986. Pursuant to conspiracy to intimidate the plaintiff and to obstruct justice by injury and damage to the plaintiff, Defendants Hartford, Burnham, Hutchens, Bentz, and Yturri, Rose, et. al., Carter, and Roehr and coconspirators Elden and Judge Redden, ratified by Anthony Yturri, intended to and did openly flagrantly display the illegal control of coconspirator Judge Redden by the defendants herein and defendants of EXHIBIT A through secret out-of-court conspiracy by their nonappearance in the face of an order to appear. Pursuant to conspiracy the aforementioned defendants flagrantly flaunted their secret conspiratorial knowledge that nothing of substantive importance was to be done at the so-called "status conference." Pursuant to the total conspiracy subject

of this complaint, nothing concerning the "status of the amended complaint" was said or done at the "status conference" September 2, 1986, and none of the pending motions of defendants were considered. Pursuant to the conspiracy subject of this complaint, the nonappearance of defendants aforementioned was flagrantly openly shown to be expected by coconspirator Hon. James A. Redden, judge, by his only casually commenting on such open disregard of his order by the several attorneys. Pursuant to conspiracy, the aforementioned conference September 2, 1986, was designed to injure and damage the plaintiff by fraudulent use of legal proceedings and pursuant to the total conspiracy to obstruct justice subject of this complaint, and it proximately caused the plaintiff to travel from Ontario, Oregon, to Portland, Oregon, and return, a one-way distance of 375 miles and to attend and

participate in extremely outrageous fraudulent legal proceedings, and it proximately caused him severe emotional distress, mental suffering, loss of time and money, and other damage alleged herein. Pursuant to the conspiracy subject of this complaint, Defendants Carter, Roehr, Burnham, Hutchens, Bentz, Anthony Yturri, Yturri, Rose, et al., Hartford, and coconspirator Elden and coconspirator Judge Redden by their aforementioned acts intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of intimidation and economic interference and obstacle in violation of ORS 162.235, a Class A misdemeanor, and as a proximate result of their unlawful and criminal acts the plaintiff was intentionally injured and damaged as herein alleged. With the intent that conduct constituting a crime

punishable as a Class A misdemeanor be performed the aforementioned defendants agreed with each other to engage in or cause the performance of such conduct in violation of ORS 161.450 (Conspiracy), and acts committed pursuant to that conspiracy proximately injured and damaged the plaintiff as herein alleged.

38.

On September 2, 1986, the plaintiff requested from court reporter Jerry C. Harris a transcript of the aforementioned so-called "status conference." Pursuant to conspiracy with defendants herein and the Hon. James A. Redden, acting outside his duties as judge, and pursuant to the total conspiracy subject of this complaint, Harris falsified the transcript, which he mailed to the plaintiff on or about September 5, 1986. That falsification included the omission of a statement by Richard Kuhn,

substituting for attorney Kenneth Roberts as attorney for defendant Thomas Roberts, **that he expected more persons to be there.** Copy of the first transcript submitted to the plaintiff is appended hereto as **EXHIBIT G**, and copy of page 2 of EXHIBIT G with lines 6 and 7 as corrected by coconspirator Harris following request by plaintiff is appended hereto as **EXHIBIT H.** Pursuant to the conspiracy subject of this complaint, **Harris changed the true transcript** to fraudulently conceal the conspiracy subject of the preceding paragraph and to obstruct justice. That extremely outrageous fraudulent falsification of a recording of a court proceeding designed to cause the plaintiff extreme emotional distress and other damage pursuant to conspiracy proximately caused the plaintiff loss of time and money including but not limited to a long distance telephone call and postage and

certification for a confirming letter and proximately caused the plaintiff mental suffering and severe emotional distress and other damage as herein alleged. Pursuant to the total conspiracy subject of this complaint, Harris without lawful authority knowingly concealed and made a false entry in a public record in violation of ORS 162.305, and as a proximate result of that act committed pursuant to conspiracy the plaintiff was intentionally injured and damaged as herein alleged. Pursuant to conspiracy, Harris intentionally obstructed, impaired and hindered the administration of law and judicial function by means of intimidation, economic interference, and obstacle in violation of ORS 162.235, and as a proximate result of the aforementioned unlawful and criminal act committed pursuant to conspiracy the

plaintiff was intentionally injured and damaged as herein alleged.

THIS COMPLAINT IS CONTINUED IN A SECOND VOLUME, ENTITLED PART II OF APPENDIX A

Part II of Appendix A contains:

(1) the rest of this complaint, including its exhibits

(2) copy of its dismissal by Judge Jackson, state court judge, under color of bar by res judicata and collateral estoppel, and

(3) Constitutions, statutes, and rules

SUBMITTED BY: Donald E. Tyler, M.D.
Petitioner, pro se
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